



Important information for men convicted of the offences of buggery and / or indecency between men who are applying for removal from the sex offenders register (Schedule 4, Sexual Offences Act 2003)

Background

1. The offences of buggery and indecency between men¹ (s. 12 and s.13 of the Sexual Offences Act 1956) will be abolished by the new Sexual Offences Act 2003. By abolishing these offences the Government is removing the final elements of the criminal law which discriminate specifically against male homosexual sexual activity.
2. In 1997, the Sex Offenders Act made certain requirements of convicted sex offenders. The notification requirements have come to be known as "the sex offenders register". Buggery and indecency between men were included as offences which could lead to sex offender registration if the offender was aged 20 or over at the time of the offence and his victim was aged under 18. This means that some men, who were aged 20 or over at the time of the offence, are on the sex offenders register for:
 - consensual homosexual activity with a man aged 16 or 17 (buggery and indecency between men were amended in 2000 to lower the age of consent for gay men to 16. However there are offenders convicted before this who remain on the register)
 - consensual homosexual activity with a man aged 16 or 17 where there was more than one person present (homosexual "group sex" in private will no longer be a criminal offence under the Sexual Offences Act)
 - consensual homosexual activity with a man aged 16 or 17 in a public toilet (The new offence of sexual activity in a public lavatory at section 71 of the Sexual Offences Act 2003 will mean that such activity will remain an offence but will not trigger the notification requirements)
3. Since the sex offenders register is for the protection of the public from sex offenders, it does not make sense to continue to register men who could perform the same activity today and either do so completely legally or who would commit a minor offence that would not lead to registration.

¹ Indecency between men is often known as "gross indecency"

4. However, the offences of buggery and indecency between men covered some acts which will remain illegal under new offences being introduced through the Sexual offences Act 2003; such as sexual activity with a child aged under 16. This means that the Government can not simply remove all men convicted of these offences from the register.
5. For these reasons Schedule 4 of the Sexual Offences Act 2003 introduces a procedure whereby persons convicted of buggery and indecency between men may apply to the Home Office for a decision as to whether the other party to the offence of buggery or indecency between men was aged 16 or over and consented to the act.

Are you eligible to apply?

6. The offenders eligible to apply to the Home Office under Schedule 4 are those who were:
 - a) convicted, cautioned or received a finding in respect of an offence of buggery
 - b) convicted, cautioned or received a finding in respect of an offence of indecency between men
 - c) convicted, cautioned or received a finding in respect of an offence of attempting, conspiring, or inciting to commit an offence of buggery or indecency between men
 - d) convicted, cautioned or received a finding in respect of an offence of aiding, abetting, counselling or procuring the commission of buggery or indecency between men
7. In the above, "received a finding" means "found not guilty by reason of insanity" or "found to be under a disability and to have done the act charged".
8. You will only be successful in your application if the victim, or other party, to the offence was aged 16 or over at the time of the offence and he consented to the act.
9. You may have a conviction, caution or finding for another sexual offence, in which case you will have to remain on the register for the period attached to that offence regardless of the Home Office's decision on your buggery / indecency between men conviction, caution etc.
10. This procedure is not suitable for anyone who wishes to appeal their conviction, caution or finding or any sentence they received. If you contend that you were not guilty of the offence then you should challenge your conviction, finding or caution in the normal way.

The Home Office Team

11. A team in the Home Office will process your application on behalf of the Home Secretary. An application form has been designed to help you to provide all of the information needed to make a decision on your application. You will need to make sure that you provide as much of the information as possible.

12. Should you have any queries you should contact:

Sexual Crime Reduction Team
Violent Crime Unit
Home Office
4th Floor, Peel Building, 2 Marsham Street
London
SW1P 4DF

Telephone: 020 7035 1761

Facsimile: 0870 336 9130

Email: David.Ireland@homeoffice.gsi.gov.uk

This is also the address to which you should send your application form.

The application form

13. The application form is in two parts. The first part asks for general administrative information and the second part asks you for specific details relating to your conviction, caution or finding for a buggery and / or indecency between men offence. **You must complete a different copy of part two of the form for each conviction, caution or finding you have for buggery and / or indecency between men that you wish the Home Office to consider.** You may make copies of part two, visit the Home Office web site where electronic copies of the form and this guidance is available or alternatively email the Schedule 4 Team.

The decision

14. You will receive written notification of the decision on your application. This will be copied to the chief officer of police for the area in which you live so that, if you are successful, your records will be updated and from that date you will no longer be obliged to comply with the notification requirements of Part 2 of the Sexual Offences Act 2003 (unless you have any other convictions, cautions or findings for other sexual offences).

15. If your application is rejected then you may appeal to the High Court.

Completing the application form: a step-by-step guide.**Part One****1. Your home address and personal details**

This section asks for your home address and other details you will have notified to the police in compliance with the Sexual Offences Act 2003. You do not have to provide your telephone number and email address but you must provide all other details. In the example below, John Smith has only provided a postal address.

Example:

NAME:	John Smith
ADDRESS:	58 Acacia Avenue, Anytown
POSTCODE:	AB12 3YZ
DATE OF BIRTH:	01/01/50
TELEPHONE NO:	N/A
EMAIL ADDRESS:	N/A

2. The offence(s) for which you have received a conviction, caution or finding which requires you to comply with the notification requirements and which you wish to be reviewed.

Here you should set out the convictions, cautions and findings you want to be considered by the Home Office and the number of such convictions, cautions and findings. You **must** complete a separate copy of part two of the form for each such conviction, caution or finding. In this section you should provide the total number you are applying in respect of. In the example below, John Smith has stated that he is applying in respect of a conviction for buggery and two cautions for buggery. This means that he will have to complete three different copies of part two of the application form.

Example:

2.1 This is an application for removal of the notification requirements in respect of (please tick as appropriate):	
a) <input checked="" type="checkbox"/>	conviction(s) for buggery (s.12 of the Sexual Offences Act 1956). How many of such convictions do you have?: <input type="text" value="1"/>
b) <input checked="" type="checkbox"/>	caution(s) for buggery (s.12 of the Sexual Offences Act 1956) How many of such cautions do you have?: <input type="text" value="2"/>
c) <input type="checkbox"/>	finding(s) for buggery (s.12 of the Sexual Offences Act 1956) How many of such findings do you have? <input type="text"/>
d) <input type="checkbox"/>	conviction(s) for indecency between men (s.13 of the Sexual Offences Act 1956) How many of such convictions do you have?: <input type="text"/>
e) <input type="checkbox"/>	caution(s) for indecency between men (s.13 of the Sexual Offences Act 1956) How many of such cautions do you have?: <input type="text"/>
f) <input type="checkbox"/>	finding(s) for indecency between men (s.13 of the Sexual Offences Act 1956) How many of such findings do you have?: <input type="text"/>

3. Additional Information

This section asks you to confirm your agreement with three statements.

4. Signature

You must sign and date your application form.

Part Two

This is the part of the form which you must complete once for each conviction, caution or finding for buggery and / or indecency between men.

5. Details about the conviction, caution or finding

You should specify which of the convictions, cautions etc. you identified in part one of this form you are now completing this copy of part two for. You must indicate whether you are applying to the Home Office in respect of a buggery or an indecency between men offence (or an attempt etc to commit these offences). You must also state whether you are applying in respect of a conviction, caution or finding.

Example, Mr Smith is completing this copy of part two of the application form for his buggery conviction:

5.1 Are you completing this copy of this application form in relation to a conviction for: (please tick box):
<input checked="" type="checkbox"/> Buggery (s.12 of the Sexual Offences Act 2003)
<input type="checkbox"/> An attempt, conspiracy or incitement to commit a buggery offence
<input type="checkbox"/> Aiding, abetting, counselling or procuring the commission of a buggery offence
<input type="checkbox"/> Indecency between men (s.13 of the Sexual Offences Act 1956) (This offence is also known as "gross indecency")
<input type="checkbox"/> An attempt, conspiracy or incitement to commit an indecency between men offence
<input type="checkbox"/> Aiding, abetting, counselling or procuring the commission of an indecency between men offence
5.2 Were you convicted in a court for this offence, were you cautioned by a police officer, or was a finding made in a court? (please tick box)?
<input checked="" type="checkbox"/> convicted in a court
<input type="checkbox"/> cautioned by a police officer after admitting the offence.
<input type="checkbox"/> found not guilty by reason of insanity or found to be under a disability and to have done the act charged

6. Your details at the time of the offence and

7. Your details at the time of conviction, caution or finding

Some applicants may have changed their names and / or their addresses since they committed an offence and / or since they were convicted etc of the offence. You must complete this section regardless of whether you have already provided these details elsewhere.

Example:

6. Your details at the time of the offence	
<i>In order to establish the facts around your conviction, caution or finding we may need to know your details at the time you committed the offence. Please complete this section even if you have provided the same details elsewhere on this application form.</i>	
NAME:	John Jones
ADDRESS:	10 New Road, Newcity
POSTCODE:	N12 3OP
7. Your details at the time of conviction, caution or finding	
<i>We will also need your details at the time you were convicted, cautioned or received a finding for the offence. Again, you must complete this section even if you have provided the same details elsewhere on this application form.</i>	
NAME:	John Smith
ADDRESS:	58 Acacia Avenue, Anytown
POSTCODE:	AB12 3YZ

8. Date of the offence

You must provide the date of the offence. If you can not remember or do not know, then you should give as much information as possible.

9: Information about your conviction in a court

You should only complete this section if you were convicted in a court i.e. you ticked the first box under section 5.2. Section 9 requests certain information that will assist the Home Office in locating the papers relating to your conviction. Again, if you can not remember or do not know, then you should give as much information as you can.

Example:

9.1 What was the name of the court at which you were convicted? (if you do not know the name please indicate whether it was a magistrates' or crown court):	Anytown Magistrates Court
9.2 What was the address of the court? (if you do not know, please indicate the town / city in which it was located)	15 Main Road, Anytown
9.3 On which date were you convicted of the buggery / indecency between men offence? (if you do not know, please give an indication to the month and year)	1st September 1998
9.4 Do you have the case number as used in the court? If you can provide this it may assist the Home Office in reaching a decision more quickly.	HL12345
9.5 Sometimes people are sentenced in a different court to the one in which they were convicted. If this happened to you please tick this box: <input type="checkbox"/>	
9.6 Please provide any details you may have on this court, such as name, address and location:	Anytown Crown Court, 20 Bridge Street, Anytown

9.7 What punishment / disposal did you receive in respect of this offence:

12 months' imprisonment suspended for two years

10. Information about your caution

You should complete this section if you received a caution for your offence, i.e. you ticked the second box in section 5.2. Section 10 requests certain information that will assist the Home Office in locating the papers relating to your caution. Again, if you can not remember or do not know then you should give as much information as you can.

11. Information about your finding

You should complete this section if a finding was made in respect of your offence; i.e. you were found not guilty by reason of insanity or you were found to be under a disability and to have done the act charged (and you ticked the third box in section 5.2). This section is similar to section 9; the only difference is that you must state the nature of your finding and whether you were admitted to a hospital with or without restrictions.

12:Representation about the nature of the offence

In this section you may provide any information to the Home Office in support of your application. It is important to remember that you are applying to be removed from the sex offenders register and not for a conviction or caution to be quashed. If you contend that you did not commit the offence then you should pursue an appeal of your conviction etc in the normal way. In section 12 you may state the facts of the case, for example, the age of the other party to the offence and his consent. You may continue on another sheet if necessary but please ensure that you note, under Section 13, how many extra pages you are enclosing.

13. Administration

You may wish to attach, for example, a copy of the form given to you at caution, letters from a solicitor etc. In which case, please provide details here.