EXPLANATORY MEMORANDUM TO

THE MINERS' STRIKE (PARDONS) (SCOTLAND) ACT 2022 (CONSEQUENTIAL MODIFICATIONS) ORDER 2024

2024 No. 1304 (S. 2)

1. Introduction

1.1 This explanatory memorandum has been prepared by the Office of the Secretary of State for Scotland and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Ian Murray, Secretary of State at the Scotland Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Louise Nicholls, Deputy Director for Constitutional Policy, at the Scotland Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Freya Croxford at the Scotland Office Telephone: 07845 878924 or email: freya.croxford@ukgovscotland.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Miners' Strike (Pardons) (Scotland) Act 2022 ("the 2022 Act") provides an automatic pardon for qualifying individuals (miners, household members of a miner and (if not already covered under 'household member'), a parent, child or sibling of a miner) convicted of certain offences committed in Scotland during the miners' strike of 1984-5 in circumstances connected with the strike. In general terms, a pardon is a formal act of forgiveness granted by the Crown under the Royal prerogative of mercy or by statute, releasing a person from some or all of the legal consequences of a conviction. A full pardon, as is the case under the 2022 Act, does not eliminate the conviction for an offence but merely removes the penalty, obloquy and all disqualifications that ensue from the conviction. Given the passage of time, the effect of the pardon in this context is symbolic and is intended to relieve the stigma of any associated convictions. The pardon applies to those living or deceased. This Order amends section 3 of the 2022 Act by adding offences under section 7 of the Conspiracy, and Protection of Property Act 1875 ("the 1875 Act") to those listed as included in the pardon.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Scotland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Scotland.

5. Policy Context

What is being done and why?

5.1 This Order amends section 3 of the 2022 Act by adding offences under section 7 of the 1875 Act to those listed as included in the pardon. At the time of the strike, section 7 criminalised a person who carried out a specified act wrongfully and without lawful authority with a view to compelling another person to abstain from doing or to do something which that other person had the legal right to do or to abstain from doing. Section 7 has since been repealed and a corresponding offence is contained in section 241 of the Trade Union and Labour Relations (Consolidation) Act 1992. These offences relate to a reserved matter under schedule 5 Part 2 paragraph H1 of the Scotland Act 1998 (employment and industrial relations), therefore section 7 was not included in the list contained in section 3 of the 2022 Act on enactment.

5.2 The limited data available,1 given the passage of time since the strike, suggests that there were 16 convictions under the 1875 Act related to the strike in Scotland. Given the passage of time, there is no robust evidence to confirm the type of conduct which led to such convictions. It is however envisaged that this offence may have been used to prosecute individuals arrested for seeking to prevent others from crossing a picket line or demonstrating against others who chose to work during the dispute-for example in the context of a gathering outside the home of a working miner.

5.3 At the time of the strike, the section 7 offence on conviction carried a maximum fine of £50 or three months imprisonment. There is no evidence that anyone was imprisoned as a result of being convicted in Scotland in relation to the strike. The conduct that led to such convictions (even if a degree of violence was involved) could therefore be considered to be on the lower end of the scale – similar to conduct charged as a breach of the peace. Breach of the peace is already a qualifying offence under the 2022 Act.

What was the previous policy, how is this different?

5.4 The previous policy was to set the qualifying offences under the 2022 Act as theft, breach of the peace, breach of bail conditions, which at the time of the strike was covered by section 3 of the Bail etc. (Scotland) Act 1980, and an offence under section 41(1)(a) of the Police (Scotland) Act 1967 which criminalised assaulting, resisting, obstructing, molesting or hindering a constable in the execution of their duty. The instrument seeks to add the 1875 Act offence to the list of qualifying offences under the 2022 Act. The rationale for change is set out under section 6 of this memorandum.

6. Legislative and Legal Context

How has the law changed?

6.1 If the instrument were to come into force, then an offence under section 7 of the 1875 Act would be added as a qualifying offence under section 3 of the 2022 Act. The desired outcome being that an individual convicted by a Scottish court of an offence under section 7 of the 1875 Act would be automatically pardoned, subject to meeting the remaining qualifying criteria set out under the 2022 Act. There is no change proposed to the legal and operational effect of the pardon as previously set out in section 4 of the 2022 Act.

[1] Miners' Dispute (Hansard, 7 February 1986) (parliament.uk)

Why was this approach taken to change the law?

6.2 The offence in section 7 of the 1875 Act was not included in the list contained in section 3 of the 2022 Act on enactment. The Scottish Government subsequently made a request to use an Order under section 104 of the Scotland Act to include the offence set out in section 7 of the 1875 Act. The Secretary of State for Scotland has agreed that it is expedient in consequence of the 2022 Act to do so.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Scottish Government previously undertook a public consultation in 2021 relating to the qualifying criteria for pardoning Miners convicted of certain offences relating to the Miners' Strike of 1984-85. This largely informed the provisions now currently enacted under the 2022 Act. The results of the consultation and associated documentation are published on the Scottish Government Citizen Space website[2].

7.2 The proposal to seek the inclusion of the section 7 offence under the 1875 Act arose from the Scottish Parliament's consideration[3] [4] [5] [6] of the draft legislation which later became the 2022 Act. This involved debate on such matters during various stages of its legislative scrutiny. The inclusion of the section 7 offence within the pardon qualifying criteria was also supported by the National Union of Mineworkers Scotland.

7.3 It is not considered that there is any requirement for further consultation specifically on this instrument. The results of the original public consultation[7] showed broad support for a pardon. The addition of the 1875 Act offence is intended to enable a relatively low number of individuals (estimated at 16) to be pardoned should the remaining qualifying criteria be met.

8. Applicable Guidance

8.1 This instrument does not include applicable guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument as the pardons do not involve additional costs or other substantial impacts to the public, therefore it is not necessary.

9.2 Impact Assessments completed in relation to the 2022 Act are published on the Scottish Government website[8] [9] .

[2] Miners' Strike 1984/85 Pardon: Consultation
[3] Share your views on the Miners' Strike (Pardons) Scotland Bill
[4] Scottish Parliament, Equalities, Human Rights and Civil Justice Committee– Stage 1 Report on the Miners' Strike (Pardons) (Scotland) Bill
[5] Scottish Parliament, Equalities, Human Rights and Civil Justice Committee – Stage 2 consideration of the Miners' Strike (Pardons) (Scotland) Bill
[6] Scottish Parliament – Stage 3 consideration of the Miners' Strike (Pardons) (Scotland) Bill
[7] Miners' strike 1984/85 pardon consultation: analysis of responses
[8] Miners' Strike (Pardons) (Scotland) Bill: equalities impact assessment – summary
[9] Miners' Strike (Pardons) (Scotland) Bill: business and regulatory impact assessment

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument affects qualifying individuals only.

9.4 The legislation does not impact small or micro businesses.

9.5 There is no, or no significant, impact on the public sector because this instrument affects qualifying individuals only.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is aligned with the approach taken to the 2022 Act. The 2022 Act does not include a provision for a statutory review. Given the minor nature of these convictions and the passage of time since the strike, these convictions will be "spent" under legislation relating to rehabilitation of offenders, and will almost certainly all have been removed from police records following the application of standard deletion policies.

10.2 Given that there is no application process nor any requirement on an individual to notify the Scottish Government that they believe they meet the criteria, the Scottish Government has no information as to how many people have actually undertaken a self-assessment against the pardon criteria to date.

10.3 The Scottish Government has produced guidance[10] to assist people to self-assess whether they are eligible. The guidance confirms the types of offences included in the pardon and who may be eligible. If the instrument were to come into force, then the guidance would be updated accordingly.

10.4 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of the Miners' Strike (Pardons) (Scotland) Act 2022 (Supplementary Provisions) Order 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").

[10] Miners' Strike (Pardons) (Scotland) Act 2022: pardon eligibility - self-assessment guide