

**Public consultation to inform the final recommendations of the Working Group to
Examine the Disregard of Convictions for Certain Qualifying Offences Related to
Consensual Sexual Activity Between Men**

The Working Group has identified a number of key issues that would benefit from a targeted public consultation. The responses received in relation to this consultation will inform the Working Group's final deliberations and help shape their final recommendations to the Minister for Justice for the development of a scheme to disregard qualifying offences related to consensual sexual activity between men.

Your participation is greatly appreciated and is essential to ensuring robust policy recommendations by the Working Group.

There are seven questions contained in this consultation. You do not need to answer all consultation questions. Each question is optional and you can skip any questions that may not be relevant to you and the submission will still be accepted.

The deadline for completion of the survey is 5pm on Friday 9 December 2022.

Any further information or queries about this consultation process can be submitted to the following contact address: disregard@justice.ie

Each submission will be dealt with as sensitively as possible with recognition of the fact that this process may be difficult for affected persons, their families, friends and the wider LGBTQI community.

Please note that all submissions received will be subject to the provisions of the Freedom of Information Act 2014 and may also be published as part of any final reporting. Any personal data submitted as part of the consultation process will be treated in accordance with the requirements of the GDPR and the Data Protection Acts 1998 - 2018. The Working Group reserves the right not to accept submissions, this may occur if your submission does not relate to the remit of the Working Group.

Thank you for taking part in this public consultation process.

Consultation Questions

Personal Information

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Question 1

What body would be the most appropriate 'first' point of contact for applicants to a disregard scheme?

- Department of Justice ☐
- An Garda Síochána ☐
- Irish Human Rights and Equality Commission (IHREC) ☒
- Other: The sensitive nature of applications to this scheme makes professionalism, empathy and understanding a priority for applications. For this reason, the Irish Human Rights and Equality Commission, as our national equality body, should be the first point of contact. However, given that they are a less familiar and convenient institution than An Garda Síochána, steps should be taken to ensure that they are as accessible as possible to applicants. This will

Question 2

Other than the provisions which explicitly criminalised consensual sexual activity between men are there any other provisions which were utilised to police consensual same-sex activity between men in Ireland prior to decriminalisation in 1993, and gave rise to convictions? (Note: Section 61 of the Offences Against The Person Act 1861 & Section 11 of the Criminal Law Amendment Act 1885 were the primary criminalising laws that were repealed by the Criminal Law (Sexual Offences) Act 1993.)

Yes. The diversity of legislation which was applied inappropriately to gay men is such that the most effective course of action may be to refrain fully from referring to specific laws in the disregard legislation. Rather, in line with the working group's report, it should be clear that convictions should be disregarded wherever they refer to acts which were:

○ Consensual

Question 3

Should formal statements (which could include affidavits, sworn/affirmed statements or statutory declarations) be sought where there isn't any documentation or records available in respect of convictions?

Yes ☒ No ☐

Please provide any additional information in response to this question here:

Yes. In the event that the state fails to keep or recover records of a conviction, it should be possible for

Question 4

How can participation in the scheme be encouraged? (How can the process be made user friendly and accessible while ensuring that the dignity of applicants is respected and minimising any potential discomfort or re-traumatisation of those affected in the application process)

The scheme should be widely advertised and promoted by the department across media platforms. Indeed, it may be necessary for the advertising in question to have an international reach, so as to be seen by men who emigrated to avoid the homophobia they faced in Ireland. Collaboration with LGBT+ media outlets in this regard may also be of use.

Question 5

Should the application of the scheme be limited to convictions for consensual sexual activity between men or were there other actions employed in policing sexual activity or affection between men that should be considered by the Working Group?

Should records of prosecutions which were not successful (i.e. no conviction) also be considered by the Working Group? Yes ☒ No ☐

Please provide any additional information in response to this question here:

Question 6

The Working Group is conscious of the harm experienced by affected men, their families, loved ones and the wider LGBTQ+ community and take a trauma informed and non-adversarial approach in their work that seeks to minimise the potential for any re-traumatisation. The work of the Working Group is underpinned by the following human rights and equality principles: the right to equality and non-discrimination, the right to privacy, the right to an effective remedy, the right to redress¹, transparency, fair procedures and accountability, accessibility and participation.

Are there any additional human rights and equality considerations that you would like the Working Group to consider in respect of the development of a disregard scheme and/or the administration of that scheme?²

Redress may be appropriate in this instance for those men cleared of their convictions under this legislation. The working group should investigate possibilities for redress, particularly with reference to the experience of Magdalene Laundries survivors.

More generally, The legislation should be written in line with best human rights and equality principles as set out by the

Question 7

Are there any other issues that fall under the remit of the Working Group in developing a disregard scheme that you would like them to consider? (More general feedback on the proposed scheme is welcomed)

The state's abuse of gay men went beyond spurious convictions and was perpetuated at every level of the justice system. Such abuses included but were not limited to:

- Denial of funding to Gay Health Action for their HIV/AIDS work
- The use of the 'homosexual panic' defence in trials of killers of gay men

¹ The development of a disregard scheme is a form of redress itself

² The remit of the Working Group is limited to the provisions in its Terms of Reference, which is to make recommendations related to the development of a scheme to disregard qualifying offences relating to consensual acts between adult males