



Law Society  
of Scotland

# Miners' Strike (Pardons) (Scotland) Bill

Stage 3 Briefing

June 2022



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We previously responded to the Scottish Government's consultation on *Miners' Strike 1984/85 Pardon*<sup>1</sup> in June 2021. In January 2022, we responded to the Committee's call for evidence<sup>2</sup> on the Bill. We now welcome the opportunity to provide a briefing ahead of the Stage 3 debate on the Miners' Strike (Pardons) (Scotland) Bill (the Bill).

If you would like to discuss this briefing or if you would like more information on the points that we have raised, please do not hesitate to contact us. Contact details can be found at the end of the paper.

## General comments

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We reiterate the comments as set out in our previous responses and welcome the opportunity to provide a briefing in advance of the Stage 3 debate which is scheduled to take place on 16 June 2022.

We note that the Bill aims to provide an automatic pardon for miners who were convicted of certain offences relating to the 1984 -1985 miners' strikes.

We recognise that this Bill has been prepared in response to the Independent Review of the impact on communities of the policing of the miner's strike 1984-85<sup>3</sup>. This report acknowledged the consequences to individuals and communities following industrial action by National Union of Mineworkers between 12 March 1984 and 3 March 1985. This era has left divisive and long-lasting impacts upon individuals, their families and the communities involved. Since that time there have been questions raised about political interference, policing, fairness and how the courts dealt with miners who were accused of crimes resulting from the strikes.

<sup>1</sup> [2021-06-04-crim-miners-strike-pardon.pdf \(lawscot.org.uk\)](#)

<sup>2</sup> [Miners' Strike \(Pardons\) \(Scotland\) Bill | Law Society of Scotland \(lawscot.org.uk\)](#)

<sup>3</sup> [Scottish-Policing-of-the-Miners-Strike-review.pdf \(num.org.uk\)](#)

The Bill comprises of 7 sections, where the specific conditions for a pardon are set out in sections 1, 1A and 2.

Section 1 sets out the timescale to secure a pardon where the conduct of the offence occurred between 12 March 1984 and 3 March 1985.

Section 1 also lists the criteria that a miner must meet in order to qualify for a pardon being either condition A or condition B in relation to an offence listed in section 2(a) to (c) of the Bill or condition C in relation to an offence of theft.

Condition A specifies that the conduct must have occurred while the miner was engaged or participating in

- i. activity (whether or not organised) supporting or opposing the miners' strike, or
- ii. activity ancillary to such activity (for example, assembling before or after or travelling to or from such activity) **and**
- iii. did not occur for a reason unrelated to the miners' strike (for example, a disagreement about a personal matter).

Condition B specifies that the conduct

- i. occurred in response to conduct that meets condition A, and
- ii. did not occur for a reason unrelated to the miners' strike.

Condition C specifies that the conduct occurred because of economic hardship arising from participation (whether by the individual or another person) in the miners' strike.

Section 1A of the Bill sets out the qualifying conditions for an individual to secure a pardon. A qualifying individual is defined as being a living or deceased individual who

- was a miner, or
- was, at the time of the commission of the offence, a member of the same household as a miner.

Section 2 of the Bill defines the convictions which will secure a pardon. These offences are:

- Breach of the peace
- Breach of bail conditions under Section 3 of the Bail etc. (Scotland) Act 1980
- Obstructing police etc. under Section 41(1)(a) of the Police (Scotland) Act 1967
- Theft

Section 3 of the Bill confirms that a pardon will not

- Affect any conviction or sentence,
- Give rise to any right or entitlement or liability, or
- Affect the Royal prerogative of mercy.

We have the following comments to put forward for consideration.

## Specific comments on the Bill

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### Section 1

We welcome the amendments made at Stage 2 to the language used in Section 1 of the Bill and in particular the removal of the phrase “other similar gathering”. We previously set out our view that the language used was ambiguous and noted that the phraseology used in earlier stages of the Bill undermined its purpose. We previously cautioned that this wording could possibly lead miners and/or their families to mistakenly believe that they have been pardoned.

We would reiterate our comments in response to the reference in Section 1 Condition A of the Bill which relates to “travelling to or from” activity related to the strikes. We previously advised that similar wording (specifically “on a journey to or from”) was contained in Section 2 (2) of the Offensive Behaviour at Football & Threatening Communications (Scotland) Act 2012<sup>4</sup>, now repealed<sup>5</sup>. We set out our concerns during the Parliamentary passage of that Act<sup>6</sup> that this phraseology was open to wide interpretation, may have been difficult to enforce and could ultimately lead to challenges within the courts system.

### Section 1A

This section sets out the qualifying criteria for individuals. We have no comment to make.

### Section 2

We note that an estimated total of 1,350 miners were arrested for public disorder offences in Scotland relating to the miners’ strikes<sup>7</sup>. This led to approximately 470 court cases with a conviction rate of 85%. It is however noted that no robust historical information exists to provide an accurate figure of former miners who are likely to be eligible for a pardon<sup>8</sup>. We acknowledge and welcome the proposals which were set out

<sup>4</sup> [Offensive Behaviour at Football and Threatening Communications \(Scotland\) Act 2012 \(legislation.gov.uk\)](https://legislation.gov.uk/uk/scots/acts/2012/1)

<sup>5</sup> [Offensive Behaviour at Football and Threatening Communications \(Repeal\) \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk/uk/scots/acts/2018/1)

<sup>6</sup> [OB3. Law Society of Scotland.pdf \(parliament.scot\)](https://parliament.scot/ob3-law-society-of-scotland.pdf)

<sup>7</sup> [Appendix A - Policing of the miners' strike 1984-1985 - impact on communities: independent review - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/appendix-a-policing-of-the-miners-strike-1984-1985-impact-on-communities/independent-review/pages/1)

<sup>8</sup> [Policy Memorandum \(parliament.scot\)](https://parliament.scot/policy-memorandum) at paragraph 14

in the Stage 1 Report for the Scottish Government to work with the National Union of Mineworkers (NUM) to identify as many affected individuals as possible.

We note that the Bill was amended at Stage 2 to cover the offence of theft.

### Section 3

We note that Section 3 of the Bill specifically stresses that a pardon will not affect any conviction or sentence, nor will it give rise to any right or entitlement or liability. Given that pardons are ordinarily issued in order to relieve a person of some or all the legal consequences arising from a criminal conviction, which includes any impact on employment, travel, education, housing, jury service, insurance, adoption or public service; we would welcome clarity on the impact that a pardon would have.

We would reiterate that those affected will not need to apply for a pardon. We are of the view that the process needs to be clearly publicised and specifically targeted to the right communities.

Careful thought should be given as to how to manage this properly. Legal advice and assistance should also be made available to those affected (and their families) given the time that has elapsed, to help them understand whether they meet the relevant criteria, but also to explain the effect of a pardon on their criminal record.<sup>9</sup>

### Section 4

This section relates to the interpretation of certain terms used within the Bill. We have no comments to make.

### Section 5 and Section 6

These sections relate to the commencement and title of the Act. We have no comment to make.

**For further information, please contact:**

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<sup>9</sup> [2021-06-04-crim-miners-strike-pardon.pdf \(lawscot.org.uk\)](#)