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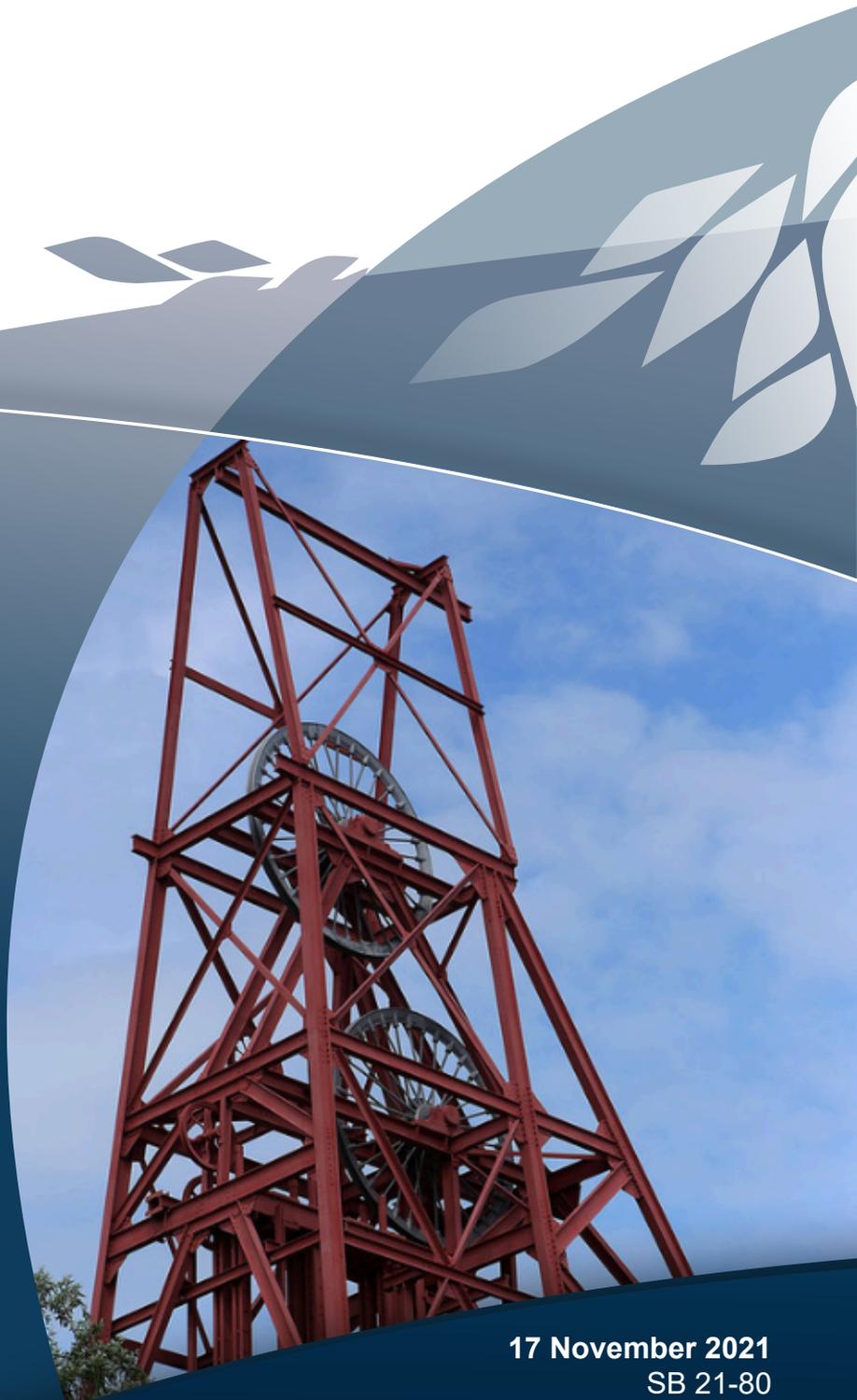
SPICe Briefing

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Miners' Strike (Pardons)(Scotland) Bill 2021

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The Miners' Strike (Pardons) (Scotland) Bill 2021 (the Bill) was introduced in the Scottish Parliament on 27 October 2021. It aims to provide pardons to miners who were convicted of certain offences between 12 March 1984 and 3 March 1985 while picketing during the miners' strike.



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Executive summary

The miners' strike (the strike) was an bitterly fought industrial dispute which lasted from 12 March 1984 to 3 March 1985.

In the years that followed the strike, there were questions about whether the strike was policed in a fair way, whether the justice system treated miners fairly, as well as the way in which certain miners who were arrested were dismissed from their jobs. There were also claims of political interference in the policing of the strike.

There have been ongoing calls since the end of the strike for a public inquiry into the policing of the dispute and the way in which it was handled by the courts.

On 7 June 2018, the Cabinet Secretary for Justice, Michael Matheson MSP, [announced an independent review of the policing of affected communities in Scotland during the miners' strike](#).

The Independent Review, which was led by John Scott QC, considered evidence from a range of sources. Its [final report](#), which was published in October 2020, recommended that the Scottish Government introduce a pardon by an Act of Parliament for men convicted of matters related to the strike.

[The Bill](#) largely follows the recommendation of the Independent Review, albeit with some changes to the qualifying criteria for the pardon.

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What is the background to the Bill?

The miners' strike

The miners' strike (the strike) was an industrial dispute in the 1980s. It started at a national level on 12 March 1984 when the National Union of Mineworkers (NUM) called on its members to stop work with the broad aim of preventing further UK pit closures by the National Coal Board (NCB).ⁱ It did not finish until almost a year later, on 3 March 1985, when NUM delegates voted to call off the strike.²

The strike was a bitterly contested dispute and there were frequent clashes between the police and picketing mineworkers across the UK and Scotland, both outside Scottish mines and at the [Ravenscraig Steelworks](#) in Lanarkshire and the [Hunterston ore and coal-handling terminal](#) on the Firth of Clyde. Miners were arrested for breach of the peace, assault and other offences and some were dismissed from their jobs.

[The Policy Memorandum to the Bill](#) describes the strike as:

“ One of the most bitter and divisive industrial disputes in living memory with many contesting memories and accounts of the events that took place.”

It also states that:

“ The impact of the strike on individuals and former mining communities continues to this day, more than three decades later.”

Aftermath of the strike: calls for a public inquiry

In the years that followed the end of the strike, the main deep mines in the UK closed with the last deep mine in Scotland, Longannet in Fife, closing in 2002.³

Mine closures and the associated job losses had an immediate economic impact in coal mining areas.⁴ [Recent research by Sheffield Hallam University](#) also argues that, although certain former coalfields have recovered more than others and new jobs have been generated, on an overall level they still have weaker local economies than the norm, together with higher levels of deprivation and unemployment.⁵

In addition to the economic impacts on local communities, there remained questions about:

- whether the strike was policed in a fair way
- whether the justice system treated miners fairly
- the way in which certain miners who were arrested were dismissed from their jobs.

There were also claims of political interference in the policing of the strike.

ⁱ The NCB was a statutory corporation set up after World War II to run the nationalised UK coal industry.

At a UK level, there have been ongoing calls since the end of the strike for a public inquiry into the policing of the dispute and the way in which it was handled by the courts.^{6 7} In Scotland, the Labour MSP, Neil Findlay, and Labour MP, David Hamilton, also led calls in 2012 for the Scottish Government to revisit prosecutions of Scottish miners.⁸

In October 2016, the then UK Home Secretary, Amber Rudd MP, ruled out a public inquiry or independent review into policing during the picketing of the Orgreave Coking Plant in South Yorkshire in June 1984.⁹ The Home Secretary's decision was largely founded on the basis that the policing and justice landscape have changed fundamentally since 1984 with the result that:

“ There would therefore be very few lessons for the policing system today to be learned from any review of the events and practices of three decades ago. This is a very important consideration when looking at the necessity for an inquiry or independent review and the public interest to be derived from holding one.”

Rudd, 2016⁹

The Home Secretary's decision was followed in November 2016 by the Scottish Government calling on the UK Government to carry out a UK-wide investigation into possible political interference during the dispute. The UK Government decided not to commission such an investigation.¹⁰

The Independent Review: impact on communities of the policing of the miners' strike 1984-85

Given the devolved nature of policing and the justice system, there were also calls on the Scottish Government to carry out its own inquiry into the strike.

For example, on 28 September 2017, Neil Findlay MSP asked the then Cabinet Secretary for Justice, Michael Matheson MSP, to confirm whether there would be an inquiry into the policing of the miners' strike in Scotland.¹¹

The Cabinet Secretary responded by indicating that consideration of the issue was at an advanced stage. On 7 June 2018, he [announced in a ministerial statement an independent review of the policing of affected communities in Scotland during the miners' strike](#).¹²

The ministerial statement indicated that miscarriages of justice could be dealt with through the Scottish Criminal Cases Review Commission, but stressed that an independent review was necessary, noting that:

“ ... wrongful conviction is just one form of injustice. The question is how might we better address wider but equally distressing forms. This has come home to me in my dealings with campaigners. I have been struck, as I said, by the continuing deep feeling and sense of injustice, a sense that our fellow citizens feel they have been misrepresented and ill-treated, that they wish their side of the story to be told and that any appropriate lessons are learnt, to avoid unnecessary division and distress in the future.”

Scottish Government, 2018¹²

John Scott QC was appointed to chair the Independent Review. The other members were Jim Murdoch (Professor of Public Law at Glasgow University), Kate Thomson (former Assistant Chief Constable) and Dennis Canavan (former MP and MSP). The secretariat consisted of officials from the Scottish Government.

The Independent Review's terms of reference were focussed on the policing of the miners' strike in Scotland, in other words to:

“ investigate and report on the impact of policing on affected communities in Scotland during the period of the miners' strike from March 1984 - March 1985”

Scottish Government, 2018¹²

Work of the Independent Review

Gathering of evidence and public meetings

Unlike a statutory public inquiry, the Independent Review had no powers to compel the production of documents or the appearance of witnesses. It was therefore reliant on publicly available documents and the willingness of individuals and organisations to assist it.

The Independent Review considered a range of written evidence, including government documents from the time, academic work and newspaper reports. It also issued a [call for evidence in September 2018](#) which resulted in [96 responses where consent had been given to publish](#).¹³

In addition, the Independent Review also gathered evidence at public meetings, which were held in eight mining communities across Scotland, and through meetings with retired police officers (with the exception of two retired officers who attended the public meetings in mining communities, these meetings with police officers were private).¹⁴

The Independent Review also had discussions with the National Union of Mineworkers (NUM) in Scotland and the Retired Police Officers' Association Scotland (RPOAS).

It also met with Dr Ian Oliver and Sir William Sutherland, who were respectively Chief Constables of Central and Lothian and Borders Constabularies at the relevant time. It was, however, unable to speak to the other Chief Constables.ⁱⁱ On this point, [the final report of the Independent Review](#) notes that:

“ Unfortunately, we were unable to speak to the other Chief Constables. Most have since died and one was too frail to meet with us. This leaves a gap in evidence on the police side, especially in relation to Strathclyde Police, on the matter of political influence or interference.”

The Independent Review also did not receive evidence from strike breakers as part of the call for evidence or the public meetings. [The final report](#) notes at page 49 that:

ii At the time there were eight separate police constabularies in Scotland, each with its own Chief Constable, senior officers and command structure.

“ It is worth highlighting something that will be apparent from looking at the evidence we have gathered, namely that this group, the miners who returned to work, did not respond to the Call for Evidence or at meetings despite having the opportunity to do so in the same way as all those who made submissions. This is understandable, as strong feelings still follow them. In the eyes of the law, these men had a right to work, even if exercising it was seen as insulting and inflammatory by the striking miners.”

Scottish Government, 2020¹⁴

Further details on the evidence gathering process can be found in [the Independent Review's interim report which was published on 25 February 2019](#).¹⁵

Final report: a brief overview

The Independent Review published its [final report](#) in October 2020.¹⁴

The final report is almost 100 pages long and includes a detailed overview of the evidence which the Independent Review received.

It is not the purpose of this briefing to exhaustively summarise the evidence gathered by the Independent Review or to analyse or comment on the report's findings.

However, in terms of a very general overview, the Independent Review heard evidence which argued that wrongful arrests had been made on the picket line and that the justice system had operated in an unfair and arbitrary way towards miners.

Page 72 of the final report summarises this evidence as follows :

“ The complaints included those who said that they were arrested for no reason. In relation to complaints of miscarriage of justice, there were various examples, some men describing trials involving evidence given by police officers they had never seen before and yet who claimed to have been involved in their arrest and subsequent police procedures. As will be seen from the figures above in chapter 3, some men were also acquitted. Naturally, different men dealt with by different police officers and tried or sentenced before different Sheriffs received different outcomes but, in comparing their own cases, many have formed the view that some of the differences were a result of inconsistent application of the law as opposed to merely reflecting the factual differences in each case. This perceived inconsistency is part of the general picture of unfairness.”

Scottish Government, 2020¹⁴

In addition, the Independent Review also received evidence which indicated that miners involved in picketing were dismissed from their jobs. The report indicates that, "in Scotland, approximately 206 (1.5% of the total number of striking miners) were dismissed."¹⁶

According to page 22 of the final report:

“ When miners had been processed in the justice system, for many that was not the end of the matter. A policy of dismissal was instituted by the NCB for those convicted, seemingly regardless of the penalty imposed. The same happened to some men who were merely arrested, with charges subsequently dropped and even some who were acquitted.”

Scottish Government, 2020¹⁴

The final report indicates that dismissals were "the single-most adverse lasting impact of the strike on those from whom we received evidence" and summarises the issue at page 73 as follows:

“ No one has suggested to us that dismissal was an appropriate, reasonable or measured response to what were commonly relatively minor acts of public disorder punished by modest financial penalties imposed by a court. We consider that it was disproportionate, excessive and unreasonable.”

Scottish Government, 2020¹⁴

The report also heard evidence of the impact of the strike and its aftermath on local communities, and states at page 56 that its impression was that:

“ Visiting various former mining communities, it was impossible to miss the economic impact of the closure of pits and the death of mining. Compounding the economic impact of the Strike, followed by the closure of the pits, is the failure to invest in these communities to address these earlier impacts.”

Scottish Government, 2020¹⁴

The final report also heard evidence on the topic of political interference in the policing of the strike in Scotland. This includes information on page 13 of a meeting of the Cabinet Ministerial Group on Coal (CMGC) on 8 May 1984 in which, according to the minutes, the then Prime Minister stated:

“ The Secretary of State for Scotland should explore and report on the questions raised in the discussion about the policing of the dispute in Scotland. He should establish in particular whether Scottish Chief Constables were willing as a matter of policy to take action similar to that in England to prevent pickets from going to the scene of possible disturbances.”

Scottish Government, 2020¹⁴

The Independent Review assessed whether this statement could have influenced policing in Scotland, in particular the stopping of eight buses carrying miners at Stepps en route to Hunterston on 10 May 1984. Details of the evidence and the Independent Review's assessment of this issue can be found at pages 30-31 and 38-43 of the final report.

The report also includes a summary of evidence provided by police officers who were involved in policing picket lines. The text of the report states for example at page 46 that:

“ Police officers spoke of a wide range of experiences at picket lines, ranging from good-natured dialogue to low-level pushing and shoving, and to terrifying moments of violence, threatened and actual. The firm policy decision by Scottish police forces not to use public order uniform and equipment (more generally referred to as “riot gear”) as a common part of daily duties left officers feeling vulnerable, albeit there was an understanding that this decision had been made to avoid an increase in tensions through the sight of heavily-equipped police officers, perhaps more familiar through footage from Northern Ireland.”

Scottish Government, 2020¹⁴

It also states at page 48 that:

“ As the Police were perceived to be assisting and facilitating the working miners’ return to work by escorting them, they were seen as being implicit in trying to break the strike and they too became the focus of the miners’ wrath. Acts of disorder were perpetuated by miners’ pickets both on the picket line – abusive language, kicking, spitting and throwing missiles, and on the approaches to the collieries – throwing missiles or attempting to blockade roads. In some instances, individual officers felt so threatened that they were forced to draw their batons to protect themselves.”

Scottish Government, 2020¹⁴

The final report's recommendation

Based on the evidence it heard, the Independent Review concluded that:

“ While it is impossible now to undo all of the disproportionate consequences of such a conviction, and the SCCRC route is not a practical or realistic option, it appears to us that some positive steps should be taken towards recognising the totality of impacts as a wrong, having regard to the evidence we have considered and the background circumstances recognised by the Scottish Government when this review was announced.”

Scottish Government, 2020¹⁴

It therefore recommended that the Scottish Government introduce a pardon by an Act of Parliament for men convicted of matters related to the strike. On this point it noted that:

“ We appreciate that it may seem odd to recommend pardons when we are not saying that every case involved a miscarriage of justice, indeed it seems clear that many of the convictions were for behaviour accepted and admitted by the men involved. While the focus of our review has been on the impact of policing our recommendation is driven by the totality of impacts of various parts of the State, including policing. Especially where the then Cabinet Secretary sought ‘understanding, reconciliation and inclusion’ from our work, we could not step back from what appeared to us to be a fair, appropriate, indeed even necessary, recommendation.”

Scottish Government, 2020¹⁴

The Independent Review recommended that the pardon be an automatic one on the basis that applying to a "Pardons Tribunal" would be:

“ a cumbersome procedure whose aims would be thwarted by the same absence of records that prevents the SCCRC from being an effective and practical remedy in these cases.”

Scottish Government, 2020¹⁴

The criteria for a pardon proposed by the Independent Review were as follows:

1. no previous convictions (the report suggested that this criterion may not be necessary)
2. no subsequent convictions
3. convicted for breach of the peace or breach of bail
4. case disposed of by way of a fine.

The rationale was that the vast majority of miners would be able to qualify for a pardon as these were the most commonly used charges against miners and also the most common reason for dismissal.

The Independent Review also recommended that a pardon be granted to miners who had subsequently died and to "those who pled guilty in circumstances where it is reasonable to infer that they did so without a full appreciation of the implications of their decision."

Scottish Government's response to the Independent Review's recommendation

In October 2020, the Scottish Government announced that it had accepted in principle the Independent Review's recommendation on pardons for miners involved in the strike, but that it would give careful consideration to the qualifying criteria that might apply to the pardon.¹⁷

Subsequently, on 12 March 2021, the Scottish Government launched a [consultation into the qualifying criteria for the pardon](#).¹⁸ The consultation set out a range of qualifying criteria for consideration - some of which were previously suggested by the Independent Review. For example, the consultation asked whether miners who were imprisoned rather than fined should also be granted a pardon and whether offences in addition to those proposed by the Independent Review should be included in the criteria for a pardon.

The consultation ran until 4 June 2021 and received 377 responses, of which 290 were published following permission to do so.¹⁹ [The analysis of the responses](#) was published on 17 August 2021.²⁰ [The Policy Memorandum](#) includes a summary of this analysis at paragraph 52.²¹

The Scottish Government published its [response to the consultation](#) on 13 September 2021.²² This stated that,

“ The findings from the consultative response indicated that there was broad support for the pardon and that the only relevant qualifying criteria should be the range of offences to be covered by the pardon.”

What does the Bill do?

The Bill largely follows the recommendation of the Independent Review, albeit with some changes to the qualifying criteria for the pardon.

Paragraph 12 of [the Policy Memorandum](#) summarises the aims behind the Bill as follows:

“ The policy intention of the Bill is that the effect of the pardon is intended to be symbolic and collective. The pardon symbolises a desire for truth and reconciliation, following the decades of hurt, anger and misconceptions generated by one of the most bitter and divisive industrial disputes in living memory. It is recognised that many miners suffered disproportionate consequences for taking part in the strike and the pardon is intended to remove the stigma of any associated convictions”

Scottish Parliament, 2021²¹

It also stresses that an automatic pardon is in line with recent legislation on pardons (e.g. the Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018) and that, as the strike took place over 35 years ago, there would be a lack of available records and evidence to support a formal decision-making process on whether a person should be eligible for the pardon.²³

The main elements of the Bill are outlined below.

Sections 1 and 2

Section 1 and 2 of the Bill lay down the core criteria for pardons (see below).

The scope of the pardon: picketing of the strike

Section 1(1) provides an automatic pardon for miners who were convicted of offences defined in section 2 of the Bill.

However, under section 1(1)(a) of the Bill the pardon only applies where the conduct constituting the offence occurred between 12 March 1984 and 3 March 1985 (i.e. the period of the strike in Scotland) **and** the conduct either:

1. occurred while the miner was participating in a picket, demonstration or other similar gathering supporting the miners' strike (section 1(2)); **or**
2. occurred while the miner was travelling to participate in, or travelling from, a picket, demonstration or other similar gathering supporting the miners' strike, and was directly related to the miner's intended or actual participation in the picket, demonstration or other similar gathering (section 1(3)).

This means that offences which did not occur on, or travelling to, the picket line during the period of the strike will not be covered by the pardon. [The Policy Memorandum](#) explains at paragraph 20 that the aim is:

“ not to pardon convictions which relate to conduct which occurred at other locations in the wider community, whether or not the subject-matter of the dispute was strike-related, for example a personal dispute or altercation between a striking and non-striking miner outside the non-striking miner’s home which could have attracted a conviction of breach of the peace.”

Scottish Parliament, 2021²¹

The scope of the pardon: relevant offences

The pardon will only cover the following offences defined in section 2 of the Bill:

1. breach of the peace
2. an offence under section 3 of the Bail etc. (Scotland) Act 1980 (breach of bail conditions)
3. an offence under section 41(1)(a) of the Police (Scotland) Act 1967 (obstructing the police).

The [Policy Memorandum](#) notes that these "are considered to be the most common offences committed during strike-related activity." ²¹

Breach of the peace is a common law offence (i.e. developed through case law). As outlined in the Scottish Government's consultation ²⁴ and in the Stair Memorial Encyclopaedia (an encyclopaedia of the law in Scotland), ²⁵ at the time of the strike the courts applied the offence in such a way that any conduct which caused, or was capable of causing, mere embarrassment, upset or annoyance to another person was usually sufficient for a conviction. At the time of the strike, the offence would therefore have covered conduct wider than, for example, fighting, challenging someone to a fight, or shouting or swearing in the street. The definition has since been reinterpreted in a more narrow way in the case of [Smith v Donnelly](#) in 2001ⁱⁱⁱ so that it covers public conduct which is: (i) severe enough to cause alarm to ordinary people; and which (ii) threatens serious disturbance to the community.

Breach of bail conditions is an offence which occurs where an accused who has been granted bail (i.e. release awaiting trial) fails to comply with a condition imposed by the court (e.g. to stay away from a specified place). Paragraph 26 of the Policy Memorandum explains that, in the context of the strike, the pardon is only intended to apply:

“ where the conduct which breached the bail condition was itself directly related to participation in strike-related activity. The inclusion of such an offence is not intended to endorse similar conduct if it were to happen today, but to reflect the circumstances of the strike which led to a miner continuing to participate in such activity - for example, in returning to the picket line in defiance of a bail condition which prohibited this.”

Scottish Parliament, 2021²¹

The offence under section 41(1)(a) of the Police (Scotland) Act 1967 was not included in

iii [Smith v Donnelly](#) [2001] ScotHC 121

the criteria proposed by the Independent Review but was suggested by respondents to the Scottish Government's consultation. Broadly speaking it covers obstructing the police. Paragraph 23 of the Policy Memorandum states that:

“ At the time of the strike, it is recognised that the offence under section 41(1)(a) of the 1967 Act criminalised assaulting, resisting, molesting, obstructing or hindering a constable in the execution of their duty. The inclusion of such an offence is not intended to endorse similar conduct if it were to happen today but to reflect the circumstances of the strike which led to such conduct taking place. A clear example of such conduct could be pushing and shoving and other manhandling between miners and the police in a picket line scenario.”

The Policy Memorandum explains that the section 41(1)(a) offence will often have been charged alongside breach of the peace and that it would, therefore, not make sense to only have a pardon for breach of the peace offences.

The Policy Memorandum also stresses that the section 41(4)(a) offence would normally not cover more serious assaults on the police, noting that:

“ It is envisaged that more serious assaults on police officers would have more likely been prosecuted as common law assault which, if convicted, attracted no maximum limits on sentence. The Bill therefore does not include the potentially more serious offence of common law assault as a qualifying offence.”

Scottish Parliament, 2021²¹

Section 3

Section 3 provides that the pardon does not:

1. affect any conviction or sentence;
2. give rise to any right, entitlement or liability; or
3. affect the Royal prerogative of mercy.

Paragraph 27 of [the Policy Memorandum](#) explains that the rationale is as follows:

“ Section 3 of the Bill makes it clear that the application of a pardon is not intended to quash any convictions, nor create any new rights, liabilities or entitlements. The Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018 (“the 2018 Act”) and the Armed Forces Act 2006 (“the 2006 Act”) contain some useful parallels which have been drawn upon in terms of developing this provision in the Bill. In the case of the miners, the pardon is however intended to provide some recognition of the disproportionately adverse effects on the miners of participation in the strike, and encourage reconciliation, but without suggesting that the law itself was at fault, or was applied in a systemically discriminatory manner.”

Scottish Parliament, 2021²¹

Section 4

Section 4 of the Bill defines some of the key provisions.

For example "miner" is defined as follows:

““miner” means a person, including a deceased person, who at any time during the period beginning with 12 March 1984 and ending with 3 March 1985 was employed in any part of Great Britain— (a) by the National Coal Board established under section 1 of the Coal Industry Nationalisation Act 1946, or (b) by a person holding a licence granted under section 36(2)(a) of that Act”

The definition is therefore a relatively wide one which covers:

- deceased miners
- miners employed by the NCB (or a licensed person under the 1946 Act) in any part of Great Britain at any time during the strike period of 12 March 1984 to 3 March 1985.

As a result, miners from outside of Scotland who were convicted in a Scottish court could therefore be covered by the pardon provided they fulfil the other criteria in the Bill.

In addition, as the definition only requires that miners were employed by the NCB (or a licensed person under the 1946 Act) at some point during the strike (12 March 1984-3 March 1985), miners who were convicted following retirement or dismissal from their jobs (i.e. when no longer employed by the NCB or a licensed person) would also be covered by the pardon.

Further details on the definition of "miner" can be found at paragraphs 28-32 of [the Policy Memorandum](#).

Differences between the criteria for a pardon suggested by the Independent Review and those in the Bill

As indicated, the criteria for a pardon proposed by the Independent Review were as follows:

1. no previous convictions (the report suggested that this criterion may not be necessary)
2. no subsequent convictions
3. convicted for breach of the peace or breach of bail
4. case disposed of by way of a fine.

In contrast, the criteria in the Bill are simply that there is a relevant offence (section 2) which also fulfils the criteria in section 1. Eligibility will not depend on a lack of previous or subsequent convictions or showing that the case was disposed of by way of a fine.

SPICe understands from the Scottish Government that there were various reasons for diverging from the proposals of the Independent Review.^{iv} These included:

- The need to have straightforward qualifying criteria which would allow individuals to assess their own eligibility for the pardon (this was seen as particularly important given the lack of detailed surviving records held by the police and the judicial system)
- Fairness arguments - for example, there was feedback which indicated that it would not be fair to disqualify a person from being pardoned for strike-related convictions on the account of other convictions which may already have been spent and which no longer appeared on that person's criminal record.
- The views of stakeholders - 78% of respondents to the consultation agreed that those receiving a custodial sentence should be eligible for a pardon, while 69% and 64% of respondents respectively indicated that previous offending or subsequent offending should not be a relevant consideration for the pardon.²⁶

iv Correspondence from the Scottish Government to SPICe

How many miners could be granted a pardon?

The number of potential pardons will depend on the number of convictions which fall within the criteria for pardon proposed by the Bill.

[The Policy Memorandum](#) indicates that there is no robust information which could confirm the exact number of people who could be eligible for a pardon, but that it is likely to be between 200 to 400 former miners. The Policy Memorandum states at paragraph 14 that:

“ There are various sources of information which could indicate the number of convictions related to the strike. The report of the IRG made reference to an estimated 1,350 arrests in Scotland linked to the strike, and around 470 court cases as at June 1985, with around 85% of these leading to a conviction. A breakdown of the number of prosecutions and convictions in Scotland provided by the Solicitor General for Scotland on 7 February 1986 in response to a parliamentary question on the strike is published in Hansard. There is however no robust information to confirm the exact number of persons who may consider themselves eligible for the pardon. An estimate based on the information outlined in the IRG report could suggest between 200-400 former miners could be eligible but this number could be less or greater.”

Scottish Parliament, 2021²¹

Alternative approaches

In drawing up the Bill, the Scottish Government considered alternative approaches to an automatic pardon, namely:

1. providing an application scheme for pardons
2. carrying out a statutory public inquiry
3. making an apology
4. providing some form of monetary redress to mining communities and former miners.

As outlined above, the Scottish Government does not consider an application scheme appropriate, in particular due to the lack of available records as the strike took place over 35 years ago.

As regards a statutory public inquiry, the Scottish Government's core argument is that this would not be appropriate on the basis that this would be the UK Government's responsibility. Paragraph 42 of the Policy Memorandum states that:

“ The Scottish Ministers cannot establish a public inquiry that would consider elements of policy reserved to the UK Government. For example, the subject matter of Trade Union Relations is not devolved to Scottish Ministers and only the UK Government can address those issues, or any allegations of political interference by a previous UK Government. In November 2016, the then Cabinet Secretary for Justice, Michael Matheson MSP, wrote to the then Home Secretary stating that the UK Government should commission and appoint an independent UK-wide investigation into any political interference during the dispute . The UK Government refused to do so.”

Scottish Parliament, 2021²¹

In relation to the possibility of an apology, Paragraph 44 of the Policy Memorandum states that:

“ the offer of such an apology could be viewed as a response to the perceived actions of the then UK Government, given that the Scottish Government was not in existence at the time of the strike and that employment (including dismissal of employees) is a reserved matter. It is considered that there would be other challenges in the Scottish Government offering such an apology, as the ‘State’ in the form it was during the period of the strike, no longer exists today e.g. the operation of the NCB and the eight separate police forces across Scotland.”

As regards monetary redress, the Policy Memorandum outlines a number of arguments which it suggests would make this approach more difficult, including the need for a wider inquiry, the need for an assessment process and the fact that employment and industrial relations is reserved to Westminster (for further details see paragraphs 45-47 of the Policy Memorandum).

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