



# Disclosure (Scotland) Act 2020

## 2020 asp 13

### PART 1

#### DISCLOSURE OF CRIMINAL HISTORY AND OTHER INFORMATION

PROSPECTIVE

#### *Level 1 disclosures*

#### **1 Level 1 disclosure**

In this Part, a “Level 1 disclosure”, in relation to an individual, is a certificate—

- (a) containing the prescribed details of every unspent conviction (including an unspent childhood conviction) of the individual that is recorded in central records or, if there are no such convictions, stating that fact, and
- (b) if the individual is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003, stating that fact.

#### **2 Provision of Level 1 disclosures**

- (1) The Scottish Ministers must provide a Level 1 disclosure to an individual who—
  - (a) is 16 years of age or older, and
  - (b) makes an application.
- (2) The Scottish Ministers may provide a Level 1 disclosure to an individual who—
  - (a) is 12 years of age or older but under 16 years of age, and
  - (b) makes an application,if it appears to them from the information contained in the application that it is appropriate in the circumstances to provide the disclosure.
- (3) The Scottish Ministers may refuse to provide a Level 1 disclosure to an individual under subsection (1) if it appears to them from the information contained in the application that the information that would be contained in the disclosure could more appropriately be obtained from another person.

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- (4) A Level 1 disclosure provided under subsection (1) or (2) may relate only to the applicant.

### **3 Applications by accredited bodies on behalf of individuals**

- (1) An accredited body may make an application under section 2 on behalf of an individual.
- (2) An application by an accredited body on behalf of an individual may be made only with the consent of the individual.
- (3) The Scottish Ministers must not consider any such application that does not comply with subsection (2).
- (4) Where an application under section 2 is made by an accredited body on behalf of an individual, the individual is to be treated for the purposes of this Part as the applicant and, accordingly, any Level 1 disclosure provided as a result of the application is to be provided to the individual.
- (5) Subsection (4) is subject to section 4.
- (6) The Scottish Ministers may refuse to provide a Level 1 disclosure to an individual under section 2(1) where—
- (a) the application for the disclosure is made on behalf of the individual by an accredited body, and
  - (b) the Scottish Ministers consider that the accredited body or its lead signatory or countersignatory has failed to comply with the code of practice published under section 55.

### **4 Provision of Level 1 disclosure to third parties**

- (1) Where a Level 1 disclosure is provided to an applicant by using electronic communications, the applicant may, within the prescribed period, either—
- (a) request that the Scottish Ministers arrange for the disclosure to be made available by electronic communications to such other person or persons as the applicant may specify, or
  - (b) notify the Scottish Ministers that the applicant intends to make a Level 1 review application under section 5 in relation to the disclosure.
- (2) If the applicant makes a request under subsection (1)(a), the Scottish Ministers must comply with the request.
- (3) Where notification has been given under subsection (1)(b), the notification is to be treated as withdrawn if, before the end of the prescribed period, the applicant makes a request under subsection (1)(a).
- (4) If no request or notification is made or given under subsection (1) within the prescribed period, at the end of that period the disclosure lapses and nothing further may be done in relation to it.
- (5) Subsection (4) does not prevent the applicant subsequently making another application for a Level 1 disclosure.

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- (6) Otherwise, the Scottish Ministers must not make the disclosure available to any other person.

PROSPECTIVE

*Level 1 disclosures: review applications*

**5 Level 1 disclosure: application for review**

- (1) Where a Level 1 disclosure is provided to an applicant, the applicant may, within the prescribed period, apply to the Scottish Ministers for a review of the accuracy of any of the information contained in the disclosure.
- (2) Where a Level 1 disclosure is provided to an applicant by using electronic communications, an application may be made under subsection (1) only if the applicant has notified the Scottish Ministers under section 4(1)(b) of an intention to make the application.
- (3) An application under subsection (1) is referred to in this Part as a “Level 1 review application”.

**6 Review of accuracy of information by the Scottish Ministers**

- (1) This section applies where a Level 1 review application is made in relation to a Level 1 disclosure provided to an applicant.
- (2) The Scottish Ministers must carry out a review of the accuracy of the information contained in the Level 1 disclosure.
- (3) In the review the Scottish Ministers must decide whether the information is accurate.
- (4) The Scottish Ministers must notify the applicant of their decision.

**7 Provision of new Level 1 disclosure on conclusion of review proceedings**

- (1) This section applies where—
  - (a) a Level 1 review application is made in relation to a Level 1 disclosure provided to an applicant, and
  - (b) the Scottish Ministers have made a decision under section 6(3) in relation to the application.
- (2) The Scottish Ministers must provide the applicant with a new Level 1 disclosure as if the applicant had made an application for the disclosure under section 2 on the date on which the Scottish Ministers made the decision under section 6(3).
- (3) If the effect of the Scottish Ministers' decision under section 6(3) is, in relation to any of the information contained in the Level 1 disclosure that was subject to a review as to its accuracy, that the information is inaccurate, the Scottish Ministers must ensure that the new Level 1 disclosure contains corrected information.

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PROSPECTIVE

## *Level 2 disclosures*

### **8 Level 2 disclosure**

- (1) In this Part, a “Level 2 disclosure”, in relation to an individual, is a certificate—
- (a) containing the prescribed details of every criminal disposal incurred by the individual that is recorded in central records or, if there are no such disposals, stating that fact,
  - (b) containing information about any spent childhood convictions and children's hearing outcomes of the individual that is to be included under section 13 or, if there is no such information, stating that fact,
  - (c) containing any information relating to the individual provided by the chief constable in accordance with section 14 or, if no such information has been provided, stating that fact,
  - (d) containing information relating to the individual provided by the chief officer of a relevant overseas police force that may be included in the disclosure in accordance with section 15 or, if no such information has been provided, stating that fact,
  - (e) if the individual is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003, stating that fact,
  - (f) if section 16 applies, containing any further information under that section relating to the individual, and
  - (g) if section 17 applies, containing any further information under that section relating to the individual.
- (2) But a Level 2 disclosure in relation to an individual must not contain any details or information if—
- (a) the details or information were excluded from another Level 2 disclosure under section 31(4) following a Level 2 review application in respect of that other Level 2 disclosure, and
  - (b) it appears to the Scottish Ministers that the purpose of the disclosure is the same as the purpose of that other Level 2 disclosure.
- (3) In subsection (1), “criminal disposal”—
- (a) means—
    - (i) a conviction (other than a childhood conviction), whether spent or unspent,
    - (ii) an unspent childhood conviction,
    - (iii) an unspent caution (other than a childhood caution), but
  - (b) does not include a non-disclosable conviction.

### **9 Non-disclosable convictions**

- (1) For the purposes of this Part, a conviction of an individual is a non-disclosable conviction if—
- (a) it is a spent conviction, and
  - (b) either—

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- (i) it is not a conviction for an offence listed in schedule 1 (a “List A offence”) or schedule 2 (a “List B offence”), or
- (ii) it is a conviction for a List B offence and at least one of the conditions in subsection (2) is satisfied.

(2) The conditions are—

- (a) the disposal in respect of the conviction was an admonition or an absolute discharge,
- (b) the conviction is a childhood conviction and at least 5 years and 6 months have passed since the date of the conviction,
- (c) the conviction is not a childhood conviction and at least 11 years have passed since the date of the conviction.

(3) The Scottish Ministers may by regulations modify schedule 1 or 2.

## **10 Non-disclosable children's hearing outcomes**

(1) For the purposes of this Part, a children's hearing outcome of an individual is a non-disclosable children's hearing outcome if—

- (a) the offence which led to the children's hearing outcome is not a List A offence or a List B offence, or
- (b) the offence which led to the children's hearing outcome is a List B offence and either of the conditions in subsection (2) is satisfied.

(2) The conditions are—

- (a) the referral to the children's hearing which led to the children's hearing outcome was discharged under—
  - (i) section 69(1)(b) and (12) of the Children (Scotland) Act 1995, or
  - (ii) section 91(3)(b), 93(2)(b), 108(3)(b) or 119(3)(b) of the Children's Hearings (Scotland) Act 2011,(as the case may be),
- (b) at least 5 years and 6 months have passed since the date of the children's hearing outcome.

## **11 Provision of Level 2 disclosures**

(1) The Scottish Ministers must provide a Level 2 disclosure to an individual who—

- (a) is 16 years of age or older, and
- (b) makes an application that complies with section 12.

(2) The Scottish Ministers may provide a Level 2 disclosure to an individual who—

- (a) is 12 years of age or older but under 16 years of age, and
- (b) makes an application that complies with section 12,

if it appears to them from the information contained in the application that it is appropriate in the circumstances to provide the disclosure.

(3) The Scottish Ministers may refuse to provide a Level 2 disclosure to an individual under subsection (1) where they consider a person mentioned in subsection (4) has failed to comply with the code of practice published under section 55.

(4) The persons are—

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- (a) the accredited body countersigning the application for the disclosure,
  - (b) the lead signatory of the accredited body,
  - (c) a countersignatory of the accredited body,
  - (d) a person mentioned in section 56(1)(b)(i) at whose request the accredited body countersigned the application for the disclosure.
- (5) A Level 2 disclosure provided under subsection (1) or (2) may relate only to the applicant.

## **12 Level 2 disclosure applications: countersigning and purposes**

- (1) An application for a Level 2 disclosure under section 11 must—
- (a) be countersigned by an accredited body, and
  - (b) include a statement by the accredited body of the purpose for which the disclosure is required.
- (2) The purpose stated in the application in accordance with subsection (1)(b) must be a purpose for which the application of section 4(2)(a) or (b) of the Rehabilitation of Offenders Act 1974 (effect of rehabilitation) is excluded by virtue of an order made by the Scottish Ministers under section 4(4) of that Act.
- (3) In this Part, references to the purpose of a Level 2 disclosure are references to the purpose stated in the application for the disclosure in accordance with subsection (1)(b).

## **13 Childhood information**

- (1) Before providing a Level 2 disclosure to an applicant, the Scottish Ministers must—
- (a) ascertain whether there is any spent childhood conviction of the applicant that is recorded in central records and that is not a non-disclosable conviction,
  - (b) ascertain whether there is any children's hearing outcome of the applicant that is recorded in central records and that is not a non-disclosable children's hearing outcome, and
  - (c) if there is such a childhood conviction or children's hearing outcome, determine—
    - (i) whether the conviction or outcome is relevant for the purpose of the disclosure, and
    - (ii) whether information about the conviction or outcome ought to be included in the disclosure.
- (2) Where the Scottish Ministers determine that a spent childhood conviction or children's hearing outcome of the applicant is relevant for the purpose of the disclosure and that information about the conviction or outcome ought to be included in the disclosure, they must include in the disclosure such information about the conviction or outcome as they consider appropriate in such form as they consider appropriate.
- (3) On providing a Level 2 disclosure to an applicant that contains information under this section about a spent childhood conviction or children's hearing outcome of the applicant, the Scottish Ministers must notify the applicant of—
- (a) the reasons for their determination that—
    - (i) the conviction or outcome is relevant for the purpose of the disclosure, and

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- (ii) information about the conviction or outcome ought to be included in the disclosure, and
- (b) the right to make a Level 2 review application under section 20 for a review of the inclusion of the information.

#### **14 Provision of relevant Scottish police information**

- (1) Before providing a Level 2 disclosure to an applicant, the Scottish Ministers must request the chief constable to provide any information relating to the applicant which—
  - (a) the chief constable reasonably believes to be relevant for the purpose of the disclosure, and
  - (b) in the chief constable's opinion ought to be included in the disclosure.
- (2) The chief constable must comply with any request made under subsection (1) as soon as practicable after receiving it.
- (3) The chief constable must not provide information by virtue of a request under subsection (1) if the chief constable thinks that disclosing the information would be contrary to the interests of the prevention or detection of crime.
- (4) For the avoidance of doubt, information mentioned in subsection (1) may include information with respect to relevant behaviour within the meaning of section 5(1)(a) of the Age of Criminal Responsibility (Scotland) Act 2019.
- (5) However, the chief constable may provide information mentioned in subsection (1) relating to a time when the applicant was under 12 years of age only where—
  - (a) the independent reviewer determines, on a review under section 18 of the Age of Criminal Responsibility (Scotland) Act 2019, that the information ought to be included in the Level 2 disclosure and—
    - (i) no appeal under section 20 of that Act is taken, or
    - (ii) such an appeal having been taken, the sheriff confirms the determination under section 20(3)(a) of that Act, or
  - (b) the sheriff, on an appeal under section 20 of that Act, determines under subsection (3)(b) of that section that the information ought to be included in the Level 2 disclosure.

#### **15 Provision of relevant overseas police information**

- (1) Before providing a Level 2 disclosure to an applicant, the Scottish Ministers must request the chief officer of every relevant overseas police force to provide—
  - (a) any information relating to the applicant which—
    - (i) the chief officer reasonably believes to be relevant for the purpose of the disclosure, and
    - (ii) in the chief officer's opinion ought to be included in the disclosure, and
  - (b) a statement of the chief officer's reasons for—
    - (i) the chief officer's belief that the information is relevant for the purpose of the disclosure, and
    - (ii) the chief officer's opinion that the information ought to be included in the disclosure.

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- (2) Where information is received by the Scottish Ministers from the chief officer of a relevant overseas police force in response to a request under subsection (1), the Scottish Ministers must arrange for the independent reviewer to carry out a review of the information.
- (3) In the review the independent reviewer must decide—
- (a) whether the information is relevant for the purpose of the disclosure, and
  - (b) whether the information ought to be included in the disclosure.
- (4) The Scottish Ministers may include the information in a Level 2 disclosure only if the effect of the final outcome of proceedings in the review carried out by the independent reviewer (including any appeal against the independent reviewer's decision by virtue of regulations under subsection (5)) is that the information—
- (a) is relevant for the purpose of the disclosure, and
  - (b) ought to be included in the disclosure.
- (5) The Scottish Ministers may by regulations make further provision in connection with the carrying out of a review by the independent reviewer under this section including, in particular, provision for or about—
- (a) the provision of information to the independent reviewer for the purpose of a review (including the conferral of powers on the independent reviewer to require the provision of information),
  - (b) giving the applicant an opportunity to make representations,
  - (c) notification of the independent reviewer's decision in a review,
  - (d) an appeal to a sheriff on a point of law against the independent reviewer's decision,
  - (e) what constitutes the final outcome of proceedings for the purposes of subsection (4).
- (6) In this section—
- “chief officer”, in relation to an overseas police force, means the person responsible for the direction of the overseas police force,
- “overseas police force” means—
- (a) the States of Jersey Police Force,
  - (b) the salaried police force of the Island of Guernsey,
  - (c) the Isle of Man Constabulary,
  - (d) a body with functions in any country or territory outside the United Kingdom, the Channel Islands and the Isle of Man that correspond to those of a police force in any part of the United Kingdom,
- “relevant overseas police force” means such overseas police force as may be prescribed.

## **16 Further information for certain purposes: non-PVG scheme members**

- (1) This section applies where—
- (a) the individual applying for a Level 2 disclosure does not participate in the PVG Scheme, and
  - (b) the purpose of the disclosure is a prescribed purpose.
- (2) Regulations under subsection (1)(b) may prescribe—



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- (a) purposes relating to children, and
  - (b) purposes relating to adults.
- (3) The disclosure must also contain any further information under this section relating to the applicant, as well as the information mentioned in section 8(1)(a) to (e).
- (4) Further information under this section is—
- (a) where the purpose of the disclosure is one relating to children—
    - (i) a statement of whether the applicant is barred from regulated roles with children,
    - (ii) if the applicant is barred from such roles, the prescribed details of the circumstances in which the applicant became barred,
    - (iii) a statement of whether the Scottish Ministers are considering whether to list the applicant in the children's list,
    - (iv) if the Scottish Ministers are considering whether to list the applicant in the children's list, details of any conditions that the Scottish Ministers have imposed under section 13A(1) of the PVG Act or, if no such conditions have been imposed, a statement of that fact,
    - (v) the prescribed details of every prescribed civil court order in effect in respect of the applicant or a statement that no such order is in effect,
  - (b) where the purpose of the disclosure is one relating to adults—
    - (i) a statement of whether the applicant is barred from regulated roles with adults,
    - (ii) if the applicant is barred from such roles, the prescribed details of the circumstances in which the applicant became barred,
    - (iii) a statement of whether the Scottish Ministers are considering whether to list the applicant in the adults' list,
    - (iv) if the Scottish Ministers are considering whether to list the applicant in the adults' list, details of any conditions that the Scottish Ministers have imposed under section 13A(1) of the PVG Act or, if no such conditions have been imposed, a statement of that fact,
    - (v) the prescribed details of every prescribed civil court order in effect in respect of the applicant or a statement that no such order is in effect.

## **17 Further information for certain purposes: PVG scheme members**

- (1) This section applies where—
- (a) the individual applying for a Level 2 disclosure participates in the PVG Scheme, and
  - (b) the purpose of the disclosure is to enable or assist a person (or any other person for whom the person acts) to consider the applicant's suitability to carry out, or to be offered or supplied for, a type of regulated role.
- (2) The disclosure must also contain any further information under this section relating to the applicant, as well as the information mentioned in section 8(1)(a) to (e).
- (3) Further information under this section is—
- (a) a statement confirming that the applicant participates in the PVG Scheme in relation to the type of regulated role to which the purpose of the disclosure relates,

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- (b) a statement of whether the Scottish Ministers are considering whether to list the applicant in the relevant list,
  - (c) if the Scottish Ministers are considering whether to list the applicant in the relevant list, details of any conditions that the Scottish Ministers have imposed under section 13A(1) of the PVG Act or, if no such conditions have been imposed, a statement of that fact, and
  - (d) the prescribed details of every prescribed civil court order in effect in respect of the applicant or a statement that no such order is in effect.
- (4) Subsection (5) applies where—
- (a) an individual applying for a Level 2 disclosure participates in the PVG Scheme in relation to both types of regulated role, and
  - (b) the purpose of the disclosure relates to only one of the types of regulated role.
- (5) Where this subsection applies, the Level 2 disclosure must not disclose information that appears in the applicant's scheme record only because the applicant participates in the PVG Scheme in relation to the other type of regulated role.
- (6) In this section, “the relevant list” means—
- (a) where the type of regulated role to which the purpose of the disclosure relates is a regulated role with children, the children's list,
  - (b) where the type of regulated role to which the purpose of the disclosure relates is a regulated role with adults, the adults' list.

## **18 Provision of Level 2 disclosure to accredited bodies**

- (1) Where a Level 2 disclosure is provided to an applicant, the applicant may, within the prescribed period, either—
- (a) request that the Scottish Ministers arrange for the disclosure to be made available to the accredited body that countersigned the applicant's application, or
  - (b) notify the Scottish Ministers that the applicant intends to make a Level 2 review application under section 20 in relation to the disclosure.
- (2) If the applicant makes a request under subsection (1)(a), the Scottish Ministers must comply with the request.
- (3) Where notification has been given under subsection (1)(b), the notification is to be treated as withdrawn if, before the end of the prescribed period, the applicant makes a request under subsection (1)(a).
- (4) If no request or notification is made or given under subsection (1) within the prescribed period, at the end of that period the disclosure lapses and nothing further may be done in relation to it.
- (5) Subsection (4) does not prevent the applicant subsequently making another application for a Level 2 disclosure for the same purpose.
- (6) Otherwise, the Scottish Ministers must not make the disclosure available to the accredited body or any other person.

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## **19 Crown employment**

- (1) This section applies to an application under section 11 for a Level 2 disclosure if the application is accompanied by a statement by a person mentioned in subsection (3) stating—
  - (a) the purpose for which the disclosure is required, and
  - (b) that it is required in the course of considering the applicant's suitability for an appointment by or under the Crown.
- (2) The purpose stated in the statement in accordance with subsection (1)(a) must be a purpose for which the application of section 4(2)(a) or (b) of the Rehabilitation of Offenders Act 1974 (effect of rehabilitation) is excluded by virtue of an order made by the Scottish Ministers under section 4(4) of that Act.
- (3) Any of the following persons may make a statement for the purposes of subsection (1)—
  - (a) a Minister of the Crown,
  - (b) a member of the Scottish Government,
  - (c) any other office-holder in the Scottish Administration,
  - (d) a nominee of any person mentioned in paragraphs (a) to (c).
- (4) The requirement in section 11(1)(b) or (2)(b) that the application comply with section 12 does not apply.
- (5) Any reference in this Part to—
  - (a) the accredited body that countersigned an application for a Level 2 disclosure, or
  - (b) the accredited body to whom a Level 2 disclosure is made available,is, in relation to an application to which this section applies or a Level 2 disclosure made available in pursuance of such an application, to be read as a reference to the person who made the statement for the purpose of subsection (1).
- (6) Any reference in this Part to the purpose of the disclosure is, in relation to an application to which this section applies, to be taken to be a reference to the purpose mentioned in subsection (1)(a).

PROSPECTIVE

### *Level 2 disclosures: review applications*

## **20 Level 2 disclosure: application for review**

- (1) Where a Level 2 disclosure is provided to an applicant, the applicant may, within the prescribed period, apply to the Scottish Ministers for—
  - (a) a review of the accuracy of any of the information contained in the disclosure,
  - (b) if the disclosure includes reviewable information, a review of the inclusion of any of the reviewable information.
- (2) The following information is “reviewable information” for the purposes of this Part—
  - (a) information included under section 13 about a spent childhood conviction or children's hearing outcome of the applicant,

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- (b) information relating to the applicant provided by the chief constable in accordance with section 14,
  - (c) details of a removable conviction of the applicant.
- (3) An application may be made under subsection (1) only if the applicant notified the Scottish Ministers under section 18(1)(b) of an intention to make the application.
- (4) Where an application under subsection (1) seeks a review of the inclusion of any reviewable information, the applicant must specify in the application the reviewable information that the applicant wishes to be subject to the review.
- (5) An application under subsection (1) is referred to in this Part as a “Level 2 review application”.
- (6) In this Part, a “removable conviction” is a conviction (other than a childhood conviction) that is—
- (a) a spent conviction for a List A offence and at least 11 years have passed since the date of conviction,
  - (b) a spent conviction for a List B offence that is not a non-disclosable conviction.

## **21 Review of accuracy of information by the Scottish Ministers**

- (1) This section applies where—
- (a) a Level 2 review application is made in relation to a Level 2 disclosure provided to an applicant, and
  - (b) the Level 2 review application seeks a review of the accuracy of any of the information contained in the Level 2 disclosure.
- (2) The Scottish Ministers must carry out a review of the accuracy of the information contained in the Level 2 disclosure.
- (3) In the review the Scottish Ministers must decide whether the information is accurate.
- (4) The Scottish Ministers must notify the applicant of their decision.
- (5) A review under subsection (2) in respect of any information contained in a Level 2 disclosure may not, in relation to that information, consider any question that could be the subject of a review under—
- (a) section 22, 23 or 25, or
  - (b) section 18 of the Age of Criminal Responsibility (Scotland) Act 2019.

## **22 Review of childhood information by the independent reviewer**

- (1) This section applies where—
- (a) a Level 2 review application is made in relation to a Level 2 disclosure provided to an applicant, and
  - (b) the Level 2 review application specifies information included in the disclosure under section 13 about a spent childhood conviction or children's hearing outcome of the applicant as information that the applicant wishes to be subject to the review.
- (2) The Scottish Ministers must arrange for the independent reviewer to carry out a review of the information.

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- (3) In the review the independent reviewer must decide—
  - (a) whether the childhood conviction or children's hearing outcome is relevant for the purpose of the disclosure, and
  - (b) whether information about the conviction or outcome ought to be included in the disclosure.
- (4) No finding of fact on which a childhood conviction or children's hearing outcome is based may be challenged in a review under this section.

## **23 Review of relevant Scottish police information by the police**

- (1) This section applies where—
  - (a) a Level 2 review application is made in relation to a Level 2 disclosure provided to an applicant, and
  - (b) the Level 2 review application specifies information relating to the applicant provided by the chief constable in accordance with section 14 as information that the applicant wishes to be subject to the review.
- (2) A review under this section may not consider any information contained in a Level 2 disclosure which was or could have been the subject of a review under section 18 of the Age of Criminal Responsibility (Scotland) Act 2019.
- (3) The Scottish Ministers must arrange for the chief constable to carry out a review of the information.
- (4) In the review the chief constable must decide—
  - (a) whether the chief constable still reasonably believes the information to be relevant for the purpose of the disclosure, and
  - (b) whether the chief constable is still of the opinion that the information ought to be included in the disclosure.
- (5) In carrying out a review under this section, the chief constable must—
  - (a) by notice give the applicant an opportunity to make representations, and
  - (b) have regard to any representations made by the applicant.
- (6) A notice under subsection (5)(a) must specify the time period within which the applicant may make representations.
- (7) The chief constable must notify the Scottish Ministers of—
  - (a) the chief constable's decision under subsection (4), and
  - (b) the chief constable's reasons for the decision.
- (8) The Scottish Ministers must notify the applicant of—
  - (a) the chief constable's decision,
  - (b) the chief constable's reasons for the decision, and
  - (c) if the chief constable notifies the Scottish Ministers that the chief constable—
    - (i) still reasonably believes the information to be relevant for the purpose of the disclosure, and
    - (ii) is still of the opinion that the information ought to be included in the disclosure,the right to request a review by the independent reviewer under section 24 in relation to the information.

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*Changes to legislation: There are currently no known outstanding effects for the Disclosure (Scotland) Act 2020. (See end of Document for details)*

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## **24 Review of relevant Scottish police information by the independent reviewer**

- (1) This section applies where—
  - (a) a Level 2 review application is made in relation to a Level 2 disclosure provided to an applicant,
  - (b) the Level 2 review application specifies information relating to the applicant provided by the chief constable in accordance with section 14 as information that the applicant wishes to be subject to the review, and
  - (c) following a review under section 23 in relation to the information, the Scottish Ministers have notified the applicant that the chief constable—
    - (i) still reasonably believes the information to be relevant for the purpose of the disclosure, and
    - (ii) is still of the opinion that the information ought to be included in the disclosure.
- (2) The applicant may, within the prescribed period, request that the Scottish Ministers arrange for the independent reviewer to carry out a review of the information.
- (3) On receipt of a request under subsection (2), the Scottish Ministers must arrange for the independent reviewer to carry out a review of the information.
- (4) In the review the independent reviewer must decide—
  - (a) whether the information is relevant for the purpose of the disclosure, and
  - (b) whether the information ought to be included in the disclosure.

## **25 Review of inclusion of removable convictions by the Scottish Ministers**

- (1) This section applies where—
  - (a) a Level 2 review application is made in relation to a Level 2 disclosure provided to an applicant, and
  - (b) the Level 2 review application specifies details of a removable conviction included in the disclosure as information that the applicant wishes to be subject to the review.
- (2) The Scottish Ministers must carry out a review of the inclusion of the removable conviction.
- (3) In the review the Scottish Ministers must decide—
  - (a) whether the removable conviction is relevant for the purpose of the disclosure, and
  - (b) whether details of the removable conviction ought to be included in the disclosure.
- (4) In carrying out a review under this section, the Scottish Ministers must by notice give the applicant an opportunity to make representations.
- (5) A notice under subsection (4) must specify the period within which the applicant may make representations.
- (6) In reaching a decision in the review, the Scottish Ministers must take account of—
  - (a) any representations received by virtue of subsection (4), and

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- (b) where they, by notice under section 65(2), require any person to provide them with information for the purpose of carrying out the review, any information received by virtue of the notice.
- (7) No finding of fact on which a conviction is based may be challenged in a review under this section.
- (8) The Scottish Ministers must notify the applicant of—
  - (a) their decision under subsection (3), and
  - (b) if they decide that the removable conviction is relevant for the purpose of the disclosure and that details of it ought to be included in the disclosure—
    - (i) the reasons for their decision, and
    - (ii) the right to request a review by the independent reviewer under section 26 in relation to the conviction.

## **26 Review of inclusion of removable convictions by the independent reviewer**

- (1) This section applies where—
  - (a) a Level 2 review application is made in relation to a Level 2 disclosure provided to an applicant,
  - (b) the Level 2 review application specifies details of a removable conviction included in the disclosure as information that the applicant wishes to be subject to the review, and
  - (c) following a review under section 25 in relation to the removable conviction, the Scottish Ministers have notified the applicant that they have decided that—
    - (i) the removable conviction is relevant for the purpose of the disclosure, and
    - (ii) details of it ought to be included in the disclosure.
- (2) The applicant may, within the prescribed period, request that the Scottish Ministers arrange for the independent reviewer to carry out a review of the inclusion of the removable conviction.
- (3) On receipt of a request under subsection (2), the Scottish Ministers must arrange for the independent reviewer to carry out a review of the inclusion of the removable conviction.
- (4) In the review the independent reviewer must decide—
  - (a) whether the removable conviction is relevant for the purpose of the disclosure, and
  - (b) whether details of the removable conviction ought to be included in the disclosure.
- (5) No finding of fact on which a conviction is based may be challenged in a review under this section.

## **27 Combination of reviews by the independent reviewer**

- (1) Subsection (2) applies where, in respect of the same Level 2 review application, a review is to be carried out by the independent reviewer under more than one of—
  - (a) section 22,
  - (b) section 24,

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- (c) section 26.
- (2) The Scottish Ministers must arrange for the reviews to be carried out by the independent reviewer together as a single review.
- (3) Subsection (4) applies where, in respect of the same Level 2 review application—
  - (a) a review is to be carried out by the independent reviewer under section 22, and
  - (b) a review (the “earlier review”) is to be carried out under (either or both)—
    - (i) section 23,
    - (ii) section 25.
- (4) The Scottish Ministers must ensure that the review to be carried out by the independent reviewer is not started until—
  - (a) the outcome of the earlier review or reviews has been notified to the applicant, and
  - (b) the relevant period has expired.
- (5) The relevant period is the period mentioned in whichever of the following applies—
  - (a) section 24(2),
  - (b) section 26(2).
- (6) Where both of those sections apply and the periods mentioned in them do not expire at the same time, the relevant period is taken to expire when the later period expires.

## **28 Independent reviewer: information and representations**

- (1) In carrying out a review under this Part in respect of a Level 2 review application, the independent reviewer—
  - (a) must by notice give the applicant an opportunity to make representations, and
  - (b) may by notice require any person mentioned in subsection (2) to provide the reviewer with information which the reviewer—
    - (i) believes the person holds, and
    - (ii) considers is necessary to carry out the review.
- (2) The persons are—
  - (a) the applicant,
  - (b) the Scottish Ministers,
  - (c) the chief constable,
  - (d) the Scottish Courts and Tribunals Service,
  - (e) any other person the independent reviewer considers appropriate.
- (3) Where the review includes a review under section 22 of information about a spent childhood conviction or children's hearing outcome of the applicant, the Scottish Ministers must provide to the independent reviewer a statement of their reasons for their determination—
  - (a) that the childhood conviction or children's hearing outcome is relevant for the purpose of the disclosure, and
  - (b) that information about the conviction or outcome of the applicant ought to be included in the disclosure.
- (4) Where the review includes a review under section 24 of information relating to the applicant provided by the chief constable in accordance with section 14, the



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Scottish Ministers must provide to the independent reviewer the statement of the chief constable's reasons for the chief constable's decision following the review under section 23.

- (5) Where the review includes a review under section 26 of the inclusion of a removable conviction of the applicant, the Scottish Ministers must provide to the independent reviewer a statement of their reasons for their decision following the review under section 25.
- (6) A notice under subsection (1)(a) must specify the period within which the applicant may make representations.
- (7) A notice under subsection (1)(b) must specify the information sought and the period within which it must be provided.
- (8) The chief constable must not provide information by virtue of a notice under subsection (1)(b) if the chief constable thinks that disclosing the information would be contrary to the interests of the prevention or detection of crime.
- (9) In carrying out the review, the independent reviewer must take account of any statement of reasons, representations or information received by virtue of subsection (1), (3), (4) or (5).

## **29 Notification of independent reviewer's decision**

- (1) On concluding a review under this Part in respect of a Level 2 review application, the independent reviewer must notify the persons mentioned in subsection (2) of—
  - (a) the independent reviewer's decision, and
  - (b) the independent reviewer's reasons for it.
- (2) The persons are—
  - (a) the applicant,
  - (b) the Scottish Ministers, and
  - (c) where the review included a review under section 24 of information relating to the applicant provided by the chief constable in accordance with section 14, the chief constable.
- (3) In subsection (1)(a), the “independent reviewer's decision” includes—
  - (a) where the review included a review under section 22, the independent reviewer's decision under subsection (3) of that section,
  - (b) where the review included a review under section 24, the independent reviewer's decision under subsection (4) of that section,
  - (c) where the review included a review under section 26, the independent reviewer's decision under subsection (4) of that section.

## **30 Appeal against independent reviewer's decision**

- (1) An appeal may be taken against the independent reviewer's decision in a review carried out by the independent reviewer under this Part in respect of a Level 2 review application.
- (2) The appeal may be taken by—
  - (a) the applicant, or

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- (b) where the review included a review under section 24 of information relating to the applicant provided by the chief constable in accordance with section 14, the chief constable.
- (3) The appeal is to be—
  - (a) to a sheriff, and
  - (b) on a point of law only.
- (4) The appeal may be taken before the end of the period of 3 months beginning with the day on which the independent reviewer's decision was notified to the applicant under section 29.
- (5) If, before the end of that period—
  - (a) the applicant notifies the Scottish Ministers that the applicant does not intend to take an appeal under this section, the applicant loses the right to take an appeal on the date on which the notification is given,
  - (b) the chief constable notifies the Scottish Ministers that the chief constable does not intend to take an appeal under this section, the chief constable loses the right to take an appeal on the date on which the notification is given.
- (6) In an appeal under this section, the sheriff must—
  - (a) confirm the independent reviewer's decision, or
  - (b) quash the decision and substitute for it the sheriff's own decision.
- (7) No finding of fact on which a conviction or children's hearing outcome is based may be challenged in an appeal under this section.
- (8) Proceedings in an appeal under this section may take place in private if the sheriff considers it appropriate in all the circumstances.
- (9) The sheriff may allow the appeal in part where it relates to—
  - (a) more than one decision, or
  - (b) information about two or more convictions.
- (10) The decision of the sheriff in an appeal under this section is final.
- (11) References in this section to the independent reviewer's decision are to be construed in accordance with section 29(3) and include any part of the decision.

### **31 Provision of new Level 2 disclosure on conclusion of review proceedings**

- (1) This section applies where—
  - (a) a Level 2 review application is made in relation to a Level 2 disclosure provided to an applicant, and
  - (b) proceedings on the application have finally concluded.
- (2) The Scottish Ministers must provide the applicant with a new Level 2 disclosure as if the applicant had made an application for the disclosure under section 11 on the date on which proceedings on the review application finally concluded.
- (3) If the effect of the final outcome of the proceedings is, in relation to any of the information contained in the Level 2 disclosure that was subject to a review as to its accuracy, that the information is inaccurate, the Scottish Ministers must ensure that the new Level 2 disclosure contains corrected information.

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- (4) If the effect of the final outcome of the proceedings is, in relation to any of the reviewable information that was the subject of the Level 2 review application, that the information—
- (a) is not relevant for the purpose of the disclosure, and
  - (b) ought not to be included in the disclosure,
- the Scottish Ministers must exclude the information from the new Level 2 disclosure to be provided under subsection (2).
- (5) If the effect of the final outcome of the proceedings is, in relation to any of the reviewable information that was the subject of the Level 2 review application, that the information—
- (a) is relevant for the purposes of the disclosure, and
  - (b) ought to be included in the disclosure,
- the applicant may not specify the information in any review application made in relation to the new Level 2 disclosure or any subsequent Level 2 disclosure provided for the same purpose as the original Level 2 disclosure.
- (6) Subsection (5) does not prevent the applicant from specifying the information in any review application made in relation to a subsequent Level 2 disclosure provided for the same purpose as the original Level 2 disclosure if—
- (a) the review application in relation to the subsequent Level 2 disclosure is made after the end of such period beginning with the final outcome of proceedings as the Scottish Ministers may by regulations specify, or
  - (b) the Scottish Ministers are satisfied that the applicant's circumstances have changed in a material respect since the final outcome of proceedings.
- (7) For the purposes of this section, proceedings on a Level 2 review application finally conclude on whichever of the following occurs last—
- (a) if a review of the accuracy of any information contained in the Level 2 disclosure is carried out by the Scottish Ministers, the date of the Scottish Ministers' decision under section 21(3),
  - (b) if no review is carried out by the independent reviewer in relation to any of the reviewable information that is the subject of the Level 2 review application, the expiry of the period within which the applicant could have requested that the Scottish Ministers arrange for the independent reviewer to review the inclusion of the reviewable information (see sections 24(2) and 26(2)),
  - (c) if—
    - (i) a review is carried out by the independent reviewer in relation to any of the reviewable information that is the subject of the Level 2 review application, and
    - (ii) no appeal is taken under section 30 against the independent reviewer's decision,the expiry of the period within which an appeal could have been taken against the independent reviewer's decision (see section 30(4)) or, if sooner, the relevant date,
  - (d) if—
    - (i) a review is carried out by the independent reviewer in relation to any of the reviewable information that is the subject of the Level 2 review application, and

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- (ii) an appeal is taken under section 30 against the independent reviewer's decision,  
 the date of the sheriff's decision in the appeal.
- (8) In subsection (7)(c), the “relevant date” is—
- (a) where—
    - (i) the review carried out by the independent reviewer included a review under section 24 of information relating to the applicant provided by the chief constable in accordance with section 14, and
    - (ii) both the applicant and the chief constable notify the Scottish Ministers under subsection (5) of section 30 that they do not intend to take an appeal under subsection (1) of that section,  
 the date on which the later of those notifications is made,
  - (b) in any other case, the date on which the applicant notifies the Scottish Ministers under subsection (5) of 30 that the applicant does not intend to take an appeal under subsection (1) of that section.
- (9) For the purposes of this section, “the final outcome of the proceedings”, in relation to any of the information that was the subject of the Level 2 review application, means—
- (a) where subsection (7)(a) applies in relation to the information, the Scottish Ministers' decision,
  - (b) where subsection (7)(b) applies in relation to the proceedings, the decision of the Scottish Ministers or the chief constable as the case may be,
  - (c) where subsection (7)(c) applies in relation to the information, the independent reviewer's decision as notified under section 29,
  - (d) where subsection (7)(d) applies in relation to the information, the sheriff's decision.
- (10) Subsections (11) and (12) apply where—
- (a) a new Level 2 disclosure is provided to an applicant under subsection (2),
  - (b) information is excluded from the new Level 2 disclosure by virtue of subsection (4),
  - (c) the applicant participates in the PVG Scheme, and
  - (d) the information that is excluded from the new Level 2 disclosure is also contained in the applicant's scheme record in relation to a type of regulated role to which the purpose of the new Level 2 disclosure relates.
- (11) The Scottish Ministers must remove the information from the applicant's scheme record so far as relating to the type of regulated role mentioned in subsection (10)(d).
- (12) The information is to be treated for the purposes of the PVG Act as not being vetting information.

### **32 Disapplication of provisions of section 4 of the Rehabilitation of Offenders Act 1974**

- (1) Subsection (2) applies where—
- (a) a review is to be carried out by the independent reviewer under section 22 of information included in a Level 2 disclosure about—
    - (i) a spent childhood conviction of an applicant, or
    - (ii) a children's hearing outcome of an applicant, or

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- (b) a review is to be carried out—
  - (i) by the Scottish Ministers under section 25, or
  - (ii) by the independent reviewer under section 26,of the inclusion of a removable conviction in a Level 2 disclosure.
- (2) Subsections (1)(a) and (b), (2)(a) and (b) and (3)(a) of section 4 of the Rehabilitation of Offenders Act 1974 (effect of becoming a protected person) (the “1974 Act”) do not apply—
  - (a) for the purpose of the review and, in the case of a review by the independent reviewer, any appeal under section 30 against the independent reviewer's decision in the review,
  - (b) in relation to the conviction or outcome that is the subject of the review.
- (3) Subsection (4) applies where—
  - (a) a review as mentioned in subsection (1) is carried out by the independent reviewer or, as the case may be, the Scottish Ministers,
  - (b) the effect of the final outcome of the proceedings (within the meaning of section 31(9)) on the Level 2 review application giving rise to the review is that—
    - (i) the spent childhood conviction, children's hearing outcome or removable conviction is relevant for the purpose of the Level 2 disclosure, and
    - (ii) information about or, as the case may be, details of the conviction or outcome ought to be included in the disclosure, and
  - (c) information about or, as the case may be, details of the conviction or outcome is or are included in a new Level 2 disclosure provided to the applicant by virtue of section 31(2).
- (4) Subsections (1)(a) and (b), (2)(a) and (b) and (3)(a) and (b) of section 4 of the 1974 Act do not apply—
  - (a) in relation to the purpose of the Level 2 disclosure, and
  - (b) in relation to the spent childhood conviction, children's hearing outcome or removable conviction information about or, as the case may be, details of which is or are included in the disclosure.
- (5) Subsection (6) applies where—
  - (a) information about—
    - (i) a spent childhood conviction of an applicant,
    - (ii) a children's hearing outcome of an applicant, or
  - (b) details of a removable conviction of an applicant,is or are included in a Level 2 disclosure as mentioned in subsection (3)(c).
- (6) Subject to subsections (1) and (2), the application of subsections (1)(a) and (b), (2)(a) and (b) and (3)(a) and (b) of section 4 of the 1974 Act is not excluded in relation to the spent childhood conviction, children's hearing outcome or removable conviction, or any circumstances ancillary to it, during the period before the Level 2 disclosure was provided to the applicant.

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PROSPECTIVE

*Level 2 disclosures: considering relevance and whether to include information*

**33 Level 2 disclosure: considering relevance and whether to include certain information**

- (1) This section applies where a person is considering for the purposes of section 13(1) (c), 14(1), 15(3), 22(3), 23(4), 24(4), 25(3) or 26(4)—
- (a) whether a conviction, children's hearing outcome or other information is relevant for the purpose of a Level 2 disclosure to be provided to an individual, and
  - (b) whether information about, or details of, the conviction or outcome or the other information (as the case may be) ought to be included in the disclosure.
- (2) In considering whether the conviction, children's hearing outcome or other information is relevant for the purpose of the disclosure, the person may take account of any of the following matters (amongst other matters)—
- (a) the nature and seriousness of the conviction, outcome or other information,
  - (b) the circumstances giving rise to the conviction, outcome or other information,
  - (c) in the case of a conviction, the level of any sentence imposed in respect of the conviction,
  - (d) the time that has elapsed since the behaviour giving rise to the conviction, outcome or other information occurred,
  - (e) the age of the individual at the time when the behaviour giving rise to the conviction, outcome or other information occurred,
  - (f) any previous or subsequent offences committed by the individual,
  - (g) in the case of other information, the reliability of the information.
- (3) In considering whether information about, or details of, the conviction, children's hearing outcome or the other information (as the case may be) ought to be included in the disclosure, the person may take account of any of the following matters (amongst other matters)—
- (a) the nature and seriousness of the conviction, outcome or other information,
  - (b) the circumstances giving rise to the conviction, outcome or other information,
  - (c) in the case of a conviction, the level of any sentence imposed in respect of the conviction,
  - (d) the time that has elapsed since the behaviour giving rise to the conviction, outcome or other information occurred,
  - (e) the age of the individual at the time when the behaviour giving rise to the conviction, outcome or other information occurred,
  - (f) any particular events or circumstances in the individual's life at the time when the behaviour giving rise to the conviction, outcome or other information occurred which the person considers to be relevant to the behaviour,
  - (g) any previous or subsequent offences committed by the individual,
  - (h) in the case of other information, the reliability of the information,
  - (i) in the case of other information, whether the individual has had an opportunity to challenge the information or make representations about the circumstances which gave rise to it,

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- (j) the impact on the individual of including information about, or details of, the conviction or outcome or the other information in the disclosure.
- (4) In this section, “other information” means information—
  - (a) provided or to be provided in accordance with section 14,
  - (b) provided in accordance with section 15.
- (5) The Scottish Ministers may by regulations modify subsection (2) or (3).

## PROSPECTIVE

### *Common provisions relating to Level 1 and Level 2 disclosures*

#### **34 Form and manner of provision of disclosures**

- (1) The Scottish Ministers must determine the form and manner in which a Level 1 disclosure or a Level 2 disclosure is to be provided or made available.
- (2) They may in particular determine that a Level 1 disclosure or a Level 2 disclosure is to be provided by using electronic communications.
- (3) A determination under subsection (1) must allow a Level 1 disclosure or a Level 2 disclosure to be provided in the form of a printed or written document if the applicant so requests.
- (4) The Scottish Ministers may make different determinations under this section for different disclosures or other different purposes.
- (5) The Scottish Ministers must arrange for their determinations under this section to be published in such manner as they see fit.
- (6) A Level 1 disclosure or a Level 2 disclosure must specify the date on which the disclosure was provided to the applicant.

#### **35 Reclassification of applications**

- (1) Where the Scottish Ministers receive an application under this Part for one type of disclosure, they may treat it as an application for another type of disclosure if it appears to them from the information contained in the application that the other type of disclosure is more appropriate in the circumstances.
- (2) For the purposes of this section, the types of disclosure are—
  - (a) a Level 1 disclosure,
  - (b) a Level 2 disclosure where neither section 16 nor section 17 applies,
  - (c) a Level 2 disclosure where section 16 applies,
  - (d) a Level 2 disclosure where section 17 applies.
- (3) Where the fee for the other type of disclosure is lower than the fee for the type of disclosure originally applied for, the Scottish Ministers must refund the difference in the fees to the applicant.
- (4) Where the fee for the other type of disclosure is higher than the fee for the type of disclosure originally applied for, the Scottish Ministers need not consider the

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application any further unless and until the difference in the fees is paid by the applicant.

(5) In subsections (3) and (4), references to a fee are to a fee provided for under section 61.

### **36 Regulations about procedure for disclosure requests**

The Scottish Ministers may by regulations make further provision about the procedure to be followed in connection with—

- (a) applications under this Part for Level 1 disclosures or Level 2 disclosures,
- (b) the provision of such disclosures to applicants under this Part,
- (c) making such disclosures available to persons other than the applicants.

### **37 Regulations about review procedure**

(1) The Scottish Ministers may by regulations make provision in connection with the procedure for the carrying out of any review (whether by the Scottish Ministers, the chief constable or the independent reviewer) under this Part in relation to any of the information included in a Level 1 disclosure or a Level 2 disclosure.

(2) Regulations under this section may in particular include provision about—

- (a) the time period within which any statement of reasons is to be provided for the purposes of the review,
- (b) the time period within which the applicant may make representations for the purposes of the review,
- (c) the time period within which a person required to provide information for the purposes of the review is to do so,
- (d) the time period within which any notice or notification required in connection with the review is to be given.

### **38 Power to modify definitions of Level 1 disclosure and Level 2 disclosure**

(1) The Scottish Ministers may by regulations modify—

- (a) section 1 (which defines “Level 1 disclosure”),
- (b) section 8 (which defines “Level 2 disclosure”),

including the definitions of expressions used in those sections.

(2) Regulations under subsection (1) may in particular make modifications for the purposes of, or in connection with, enabling Level 1 disclosures or Level 2 disclosures provided under this Part to include details of information held outside the United Kingdom.

### **39 Childhood information: power to modify other enactments**

(1) The Scottish Ministers may by regulations modify any disclosure enactment for the purpose of ensuring that relevant childhood information of an individual is not required or allowed to be disclosed to another person unless the information has been disclosed to another person in a Level 1 disclosure or a Level 2 disclosure under this Act.

(2) In subsection (1), “disclosure enactment” means any enactment other than this Act so far as—



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- (a) requiring or allowing the disclosure of relevant childhood information of individuals to other persons for any purpose, or
  - (b) otherwise regulating the disclosure of such information.
- (3) For the purposes of this section, “relevant childhood information” is, in relation to an individual—
- (a) information about a children's hearing outcome of the individual, and
  - (b) information about—
    - (i) a conviction,
    - (ii) a caution,
    - (iii) an alternative to prosecution (within the meaning of the Rehabilitation of Offenders Act 1974),for an offence committed when the individual was under 18 years of age.

#### **40 Presumption as to age in relation to convictions**

For the purposes of the exercise of their functions under this Part, the Scottish Ministers may, in the absence of information to the contrary, presume that a person convicted of an offence was of the same age at the time when the offence was committed as the person was at the date of the conviction.

PROSPECTIVE

### *Offences relating to Level 1 and Level 2 disclosures*

#### **41 Falsification of a Level 1 or Level 2 disclosure**

- (1) A person commits an offence if the person, with intent to deceive—
  - (a) makes a document that purports to be a Level 1 disclosure or a Level 2 disclosure,
  - (b) alters a Level 1 disclosure or Level 2 disclosure,
  - (c) uses, or allows another person to use, a Level 1 disclosure or Level 2 disclosure in a way that suggests that it relates to an individual other than the one who is the subject of the Level 1 disclosure or Level 2 disclosure.
- (2) A person commits an offence if the person knowingly makes a false or misleading statement for the purpose of obtaining, or enabling another person to obtain, a Level 1 disclosure or Level 2 disclosure.
- (3) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

#### **42 Unlawful disclosure of a Level 2 disclosure**

- (1) A person to whom a Level 2 disclosure is made available or disclosed under this Part commits an offence if the person discloses it unlawfully to another person.
- (2) A Level 2 disclosure is disclosed lawfully only so far as the disclosure is permitted by section 43; otherwise it is disclosed unlawfully.

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- (3) A person to whom a Level 2 disclosure is disclosed unlawfully commits an offence if the person discloses the Level 2 disclosure to another person.
- (4) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

#### **43 Lawful disclosures of Level 2 disclosures**

- (1) An accredited body to whom a Level 2 disclosure is made available under this Part may disclose the Level 2 disclosure—
  - (a) to any of the accredited body's employees,
  - (b) where the accredited body is not an individual, to any member or officer of the accredited body,
  - (c) where the Level 2 disclosure was made available by virtue of an application for a Level 2 disclosure made at the request of another person (a “third person”) who is, for the purpose of the disclosure, asking a question about the individual who is the subject of the disclosure—
    - (i) to that third person,
    - (ii) to any of the third person's employees,
    - (iii) where the third person is not an individual, to any member or officer of the third person.
- (2) An employee, member or officer of the accredited body to whom a Level 2 disclosure is disclosed under subsection (1) may disclose the Level 2 disclosure—
  - (a) to any other employee, member or officer of the accredited body, or
  - (b) as mentioned in subsection (1)(c).
- (3) A third person to whom a Level 2 disclosure is disclosed under subsection (1)(c) or (2)(b) may disclose the Level 2 disclosure—
  - (a) to any of the third person's employees,
  - (b) where the third person is not an individual, to any of the third person's members or officers.
- (4) An employee, member or officer of a third person to whom a Level 2 disclosure is disclosed under subsection (1)(c), (2)(b) or (3) may disclose the Level 2 disclosure to another employee, member or officer of the third person.
- (5) Disclosure of a Level 2 disclosure by a person is permitted under this section only so far as the disclosure is—
  - (a) made in the course of the person's functions,
  - (b) for a purpose that is the same as the purpose of the Level 2 disclosure, and
  - (c) in the case of disclosure as mentioned in subsection (1)(c), permitted by section 56(3) or (4).
- (6) In subsection (1), the reference to an accredited body to whom a Level 2 disclosure is made available under this Part includes a reference to any lead signatory or countersignatory of the accredited body to whom a Level 2 disclosure is made available on behalf of the accredited body.

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*Changes to legislation: There are currently no known outstanding effects for the Disclosure (Scotland) Act 2020. (See end of Document for details)*

#### **44 Unlawful request for and use of a Level 2 disclosure**

- (1) A person commits an offence if the person requests the provision of, or otherwise seeks sight of, a Level 2 disclosure for a purpose other than a permitted purpose.
- (2) In subsection (1), “permitted purpose”, in relation to a Level 2 disclosure, means a purpose falling within section 12(2) or 19(2) including, where section 17 applies to the disclosure, to enable or assist a person (or any other person for whom the person acts) to consider the suitability of the individual who is the subject of the disclosure to carry out, or to be offered or supplied for, a type of regulated role.
- (3) A person commits an offence if the person uses a Level 2 disclosure for a purpose other than a permitted purpose.
- (4) In subsection (3), “permitted purpose”, in relation to a Level 2 disclosure, means a purpose that is the same as the purpose of the disclosure.
- (5) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

#### **45 Offences under sections 42 and 44: supplementary provision**

- (1) Nothing in section 42 makes the disclosure of a Level 2 disclosure an offence where the disclosure is—
  - (a) by the individual who is the subject of the Level 2 disclosure,
  - (b) by any other person with the consent of the individual who is the subject of the Level 2 disclosure,
  - (c) to an office-holder in the Scottish Administration or a government department,
  - (d) to a statutory office-holder,
  - (e) in accordance with any obligation to provide information imposed by virtue of any enactment,
  - (f) for any other prescribed purpose.
- (2) Nothing in section 44 makes the use of a Level 2 disclosure for a purpose other than a permitted purpose an offence where the use is—
  - (a) by the individual who is the subject of the Level 2 disclosure,
  - (b) by any other person with the consent of the individual who is the subject of the Level 2 disclosure,
  - (c) by an office-holder in the Scottish Administration or a government department,
  - (d) by a statutory office-holder,
  - (e) in accordance with any obligation to provide information imposed by virtue of any enactment,
  - (f) in any other prescribed circumstances.
- (3) In this section and sections 42, 43 and 44(3), references to a Level 2 disclosure include references to any information contained in a Level 2 disclosure.

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PROSPECTIVE

*Accredited bodies***46 Register of accredited bodies**

- (1) The Scottish Ministers must maintain a register for the purposes of this Part (referred to in this Part as the “register of accredited bodies”).
- (2) In this Part—
  - (a) an “accredited body” is a person who is registered in the register of accredited bodies, and
  - (b) references to “registration” are to registration in the register of accredited bodies.

**47 Registration in the register of accredited bodies**

- (1) A person may apply to be registered in the register of accredited bodies in relation to—
  - (a) the making of applications for Level 1 disclosures under section 2 on behalf of an individual,
  - (b) the countersigning of applications for Level 2 disclosures under section 11, or
  - (c) both—
    - (i) the making of applications for Level 1 disclosures under section 2 on behalf of an individual, and
    - (ii) the countersigning of applications for Level 2 disclosures under section 11.
- (2) The Scottish Ministers must register in the register of accredited bodies a person who applies to them and—
  - (a) where the person seeks registration of the type mentioned in subsection (1) (a), satisfies the conditions mentioned in subsections (3) and (4),
  - (b) where the person seeks registration of the type mentioned in subsection (1)(b) or (c), satisfies the conditions mentioned in subsections (3) to (5).
- (3) The applicant must be—
  - (a) a body corporate or unincorporated,
  - (b) a statutory office-holder, or
  - (c) an individual who is 18 years of age or older and employs other persons in the course of a business.
- (4) The applicant must satisfy the Scottish Ministers that the applicant is likely to be acting in relation to a disclosure request.
- (5) The Scottish Ministers must be satisfied that each relevant individual is a suitable person to have access to disclosure information (see section 49).
- (6) In subsection (5), “relevant individual”, in relation to an applicant, is—
  - (a) where the applicant is an individual employing other persons in the course of a business, the individual,
  - (b) where the applicant is a body corporate or unincorporated or is a statutory office-holder—

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- (i) the individual nominated as the lead signatory of the applicant, and
  - (ii) each individual nominated as a countersignatory of the applicant.
- (7) The Scottish Ministers may register in the register of accredited bodies an individual who applies to them and—
  - (a) is 16 or 17 years of age,
  - (b) employs other persons in the course of a business, and
  - (c) satisfies—
    - (i) the condition mentioned in subsection (4), and
    - (ii) where the individual seeks registration of the type mentioned in subsection (1)(b) or (c), the condition mentioned in subsection (5).
- (8) Before refusing an application for registration under this section, the Scottish Ministers must give the applicant an opportunity to make representations.
- (9) Where the Scottish Ministers decide to refuse an application under this section for registration of the type mentioned in subsection (1)(c) because the condition mentioned in subsection (5) is not met, the decision applies to the application only insofar as the application relates to the countersigning of applications for Level 2 disclosures under section 11 (and does not affect the application insofar as it relates to the making of applications for Level 1 disclosures under section 2 on behalf of an individual).
- (10) In this Part, “disclosure information” means information contained in a Level 2 disclosure.
- (11) In this Part, references to acting in relation to a disclosure request are to be read as references to—
  - (a) in relation to registration of the type mentioned in subsection (1)(a), making an application for a Level 1 disclosure under section 2 on behalf of an individual,
  - (b) in relation to registration of the type mentioned in subsection (1)(b), countersigning an application for a Level 2 disclosure under section 11,
  - (c) in relation to registration of the type mentioned in subsection (1)(c), both—
    - (i) making an application for a Level 1 disclosure under section 2 on behalf of an individual, and
    - (ii) countersigning an application for a Level 2 disclosure under section 11.

#### **48 Protection of information: removal of registration**

- (1) This section applies to an accredited body with registration of the type mentioned in section 47(1)(b) or (c).
- (2) The Scottish Ministers may remove the accredited body from the register of accredited bodies if they consider that a relevant individual is not a suitable person to have access to disclosure information (see section 49).
- (3) Before removing an accredited body from the register of accredited bodies under subsection (2), the Scottish Ministers must—
  - (a) notify the persons mentioned in subsection (4) that they are considering whether to remove the accredited body from the register of accredited bodies, and
  - (b) give those persons an opportunity to make representations.

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- (4) The persons are—
- (a) where the accredited body is an individual employing other persons in the course of a business, the accredited body,
  - (b) where the accredited body is a body corporate or unincorporated or a statutory office-holder—
    - (i) the accredited body, and
    - (ii) the relevant individual whom the Scottish Ministers consider may not be a suitable person to have access to disclosure information.
- (5) Where notice is given under subsection (3)(a) to an accredited body that is an individual employing other persons in the course of a business, the notice must include reasons for the Scottish Ministers considering whether to remove the accredited body from the register of accredited bodies.
- (6) Where notice is given under subsection (3)(a) to the relevant individual mentioned in subsection (4)(b)(ii), in relation to an accredited body that is a body corporate or unincorporated or a statutory office-holder, the notice must include reasons for the Scottish Ministers considering whether to remove the accredited body from the register of accredited bodies.
- (7) A decision by the Scottish Ministers under subsection (2) to remove an accredited body with registration of the type mentioned in section 47(1)(c) from the register of accredited bodies applies to the body's registration only insofar as it relates to the countersigning of applications for Level 2 disclosures under section 11 (and does not affect the body's registration insofar as it relates to the making of applications for Level 1 disclosures under section 2 on behalf of an individual).
- (8) In this section, a “relevant individual”, in relation to an accredited body, is—
- (a) where the accredited body is an individual employing other persons in the course of a business, the individual,
  - (b) where the accredited body is a body corporate or unincorporated or is a statutory office-holder—
    - (i) the lead signatory of the accredited body, and
    - (ii) a countersignatory of the accredited body.

#### **49 Suitable persons to have access to disclosure information**

- (1) In determining, for the purposes of section 47(5) or 48(2) whether an individual is a suitable person to have access to disclosure information, the Scottish Ministers may have regard in particular to—
- (a) such details as may be prescribed under section 8(1)(a) of every criminal disposal incurred by the individual that is recorded in central records,
  - (b) whether the individual is—
    - (i) barred from regulated roles with children,
    - (ii) barred from regulated roles with adults,
  - (c) whether the Scottish Ministers are considering whether to list the individual in the children's list or the adults' list,
  - (d) whether—
    - (i) an application for registration in the register of accredited bodies by the individual has been refused,

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- (ii) the individual has been removed from the register of accredited bodies,
  - (iii) the individual's nomination as lead signatory or countersignatory of an accredited body has been refused,
  - (iv) all of the prescribed details relating to the individual as a lead signatory or countersignatory of an accredited body have been removed from the entry for the accredited body in the register of accredited bodies,
- and the reason for the refusal of the application, the removal of the individual (or all of the individual's prescribed details) from the register or the refusal of the nomination (as the case may be),
- (e) any information provided to them under subsection (2),
  - (f) any representations made by the applicant or the accredited body concerned,
  - (g) any other information held by the Scottish Ministers.
- (2) Before making a determination mentioned in subsection (1), the Scottish Ministers may request the chief officer of any relevant police force to provide them with information which—
- (a) is available to the chief officer,
  - (b) relates to—
    - (i) an applicant for registration in the register of accredited bodies,
    - (ii) an accredited body, or
    - (iii) an individual nominated as lead signatory or countersignatory of an accredited body,
  - (c) the chief officer considers—
    - (i) is relevant to the determination of the suitability of individuals to have access to disclosure information, and
    - (ii) ought to be provided to the Scottish Ministers.
- (3) Where a request is made under subsection (2) to the chief constable, the chief constable must comply, as soon as practicable after receiving it, with the request.
- (4) The chief constable must not provide information by virtue of a request under subsection (2) if the chief constable thinks that disclosing the information would be contrary to the interests of the prevention or detection of crime.
- (5) In this section—  
“criminal disposal” has the same meaning as in section 8(3),  
“relevant police force” means such police force as may be prescribed.
- (6) In subsection (1)(d), references to—
- (a) the refusal of an application for registration,
  - (b) removal from the register of accredited bodies (of an accredited body or all of the prescribed details of a lead signatory or countersignatory from the entry for an accredited body in the register of accredited bodies), and
  - (c) refusal of nomination as lead signatory or countersignatory,
- include references to any process applying in England and Wales or Northern Ireland which appears to the Scottish Ministers to be equivalent to such a refusal or removal.
- (7) For the purposes of this section—
- (a) references to a police force include—

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- (i) the Royal Navy Police,
- (ii) the Royal Military Police,
- (iii) the Royal Air Force Police,
- (iv) the Ministry of Defence Police,
- (v) the British Transport Police,
- (vi) the Civil Nuclear Constabulary,
- (vii) the States of Jersey Police Force,
- (viii) the salaried police force of the Island of Guernsey,
- (ix) the Isle of Man Constabulary,
- (x) a body with functions in any country or territory outside the United Kingdom, the Channel Islands and the Isle of Man that correspond to those of a police force in any part of the United Kingdom,
- (b) references to the chief officer of a police force include the person responsible for the direction of a body mentioned in paragraph (a),
- (c) each of the following is to be treated as if it were a police force—
  - (i) the Commissioners for Her Majesty's Revenue and Customs (and for this purpose a reference to the chief officer of a police force is to be taken to be a reference to any of the Commissioners),
  - (ii) the National Crime Agency (and for this purpose a reference to the chief officer of a police force is to be taken to be a reference to the Director General of the Agency), and
  - (iii) such other department or body as may be prescribed (and regulations may prescribe in relation to the department or body the person to whom a reference to the chief officer of a police force is to be taken to be).

## **50 Removal of registration on other grounds**

- (1) The Scottish Ministers may remove an accredited body from the register of accredited bodies on any of the grounds mentioned in subsection (2) or (3).
- (2) The grounds are that the Scottish Ministers consider that—
  - (a) the accredited body is no longer likely to be acting in relation to a disclosure request,
  - (b) the accredited body has breached any condition of the body's registration that is imposed on the body by virtue of section 54 or under section 55(7),
  - (c) the accredited body, its lead signatory or countersignatory or a disclosure information recipient has failed to comply with the code of practice published under section 55.
- (3) In the case of an accredited body that is a body corporate or unincorporated or a statutory office-holder, further grounds are that the accredited body does not have a lead signatory.
- (4) Where an accredited body has registration of the type mentioned in section 47(1)(c), the Scottish Ministers may remove the accredited body from the register of accredited bodies under subsection (1) in relation to either or both of—
  - (a) the making of applications for Level 1 disclosures under section 2 on behalf of an individual,
  - (b) the countersigning of applications for Level 2 disclosures under section 11.



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- (5) Before removing an accredited body from the register of accredited bodies under subsection (1), the Scottish Ministers must—
  - (a) notify the accredited body—
    - (i) that they are considering whether to remove the accredited body from the register of accredited bodies, and
    - (ii) of the reasons for considering that removal, and
  - (b) give the accredited body an opportunity to make representations.
- (6) In subsection (2)(c), a “disclosure information recipient”, in relation to an accredited body, is a person mentioned in section 56(1)(b)(i) to whom the accredited body has provided disclosure information.

## **51 Lead signatories and countersignatories**

- (1) Where an application for registration in the register of accredited bodies is made by a body corporate or unincorporated or a statutory office-holder—
  - (a) the applicant must in the application nominate a lead signatory, and
  - (b) where the applicant is seeking registration of the type mentioned in section 47(1)(b) or (c), the applicant may in the application nominate one or more countersignatories.
- (2) Where an accredited body is a body corporate or unincorporated or a statutory office-holder, the accredited body may by application nominate—
  - (a) a lead signatory in substitution for an individual previously nominated as lead signatory,
  - (b) where the accredited body has registration of the type mentioned in section 47(1)(b) or (c), a countersignatory (whether in addition to, or in substitution for, an individual previously nominated as a countersignatory).
- (3) Where an application for registration in the register of accredited bodies is made by an individual who—
  - (a) employs other persons in the course of a business, and
  - (b) is seeking registration of the type mentioned in section 47(1)(b) or (c),the applicant may in the application nominate one or more countersignatories.
- (4) Where an accredited body—
  - (a) is an individual who employs other persons in the course of a business, and
  - (b) has registration of the type mentioned in section 47(1)(b) or (c),the accredited body may by application nominate one or more countersignatories.
- (5) An application under this section containing a nomination of a lead signatory or a countersignatory must also contain the prescribed details of the lead signatory or countersignatory.
- (6) If the Scottish Ministers accept the nomination of a lead signatory or countersignatory of an accredited body under this section they must include the prescribed details of the lead signatory or countersignatory in the entry for the accredited body in the register of accredited bodies.
- (7) An accredited body must notify the Scottish Ministers of any changes in the prescribed details submitted in accordance with this section of—
  - (a) the body's lead signatory,

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(b) any countersignatory of the body.

(8) In this Part—

“countersignatory”, in relation to an accredited body, means an individual authorised to act for the accredited body in relation to the countersigning of an application for a Level 2 disclosure under section 11 by the accredited body,

“lead signatory”, in relation to an accredited body, means the individual authorised to act in relation to registration of the body and with overall responsibility for the body's acting in relation to a disclosure request (including, where the accredited body has registration of the type mentioned in section 47(1) (b) or (c), authority to act as a countersignatory of the body).

(9) An individual may not act as lead signatory or, as the case may be, countersignatory of an accredited body unless the prescribed details of the lead signatory or countersignatory are included in the entry for the accredited body in the register of accredited bodies.

## **52 Lead signatories and countersignatories: acceptance or refusal of nomination and removal from the register**

(1) Subject to subsection (2), the Scottish Ministers must accept the nomination of an individual as the lead signatory or a countersignatory of an accredited body if—

- (a) the individual is 18 years of age or older, and
- (b) the individual is—
  - (i) employed by the accredited body,
  - (ii) otherwise appointed by the accredited body to act as the lead signatory or a countersignatory of the accredited body, or
  - (iii) employed by a person acting on behalf of the accredited body.

(2) Where the accredited body has registration of the type mentioned in section 47(1)(b) or (c), the Scottish Ministers may refuse to accept the nomination of an individual as the lead signatory or a countersignatory if, in their opinion, the individual is not a suitable person to have access to disclosure information.

(3) The Scottish Ministers may remove all of the prescribed details of a lead signatory or countersignatory of an accredited body from the entry for the accredited body in the register of accredited bodies if they consider that—

- (a) the lead signatory or countersignatory is not a suitable person to have access to disclosure information, or
- (b) the lead signatory or countersignatory has failed to comply with the code of practice published under section 55.

(4) In determining, for the purposes of subsection (2) or (3)(a), whether an individual is a suitable person to have access to disclosure information, the Scottish Ministers may have regard in particular to—

- (a) the matters mentioned in section 49(1) (but subsection (2)(b) of that section applies for the purposes of this section as if it referred only to the provision of information relating to the individual who is (or is nominated as) the lead signatory or a countersignatory of the accredited body concerned), and
- (b) any representations made by the individual who is (or is nominated as) the lead signatory or a countersignatory of the accredited body concerned.

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- (5) Before refusing to accept a nomination by an accredited body of an individual as the lead signatory or a countersignatory under subsection (2), the Scottish Ministers must—
- (a) notify the individual—
    - (i) that they are considering whether to refuse the nomination, and
    - (ii) of the reasons for considering that refusal, and
  - (b) give the individual an opportunity to make representations.
- (6) Before deciding to remove all of the prescribed details of the lead signatory or a countersignatory of an accredited body from the entry for the accredited body in the register of accredited bodies under subsection (3)(a) or (b), the Scottish Ministers must—
- (a) notify the lead signatory or countersignatory—
    - (i) that they are considering whether to remove the details from the register of accredited bodies, and
    - (ii) of the reasons for considering that removal, and
  - (b) give the lead signatory or countersignatory an opportunity to make representations.
- (7) Where an accredited body has registration of the type mentioned in section 47(1)(c), a decision by the Scottish Ministers—
- (a) under subsection (2) to refuse the nomination of an individual as the lead signatory of the accredited body, or
  - (b) under subsection (3)(a) to remove the prescribed details of the lead signatory from the entry for the accredited body in the register of accredited bodies,
- relates only to the lead signatory acting in relation to Level 2 disclosures on behalf of the accredited body (and does not prevent the lead signatory acting otherwise on behalf of the accredited body).
- (8) In subsections (1), (2), (4) (insofar as it relates to subsection (2)), (5) and (7)—
- (a) the references to an accredited body include references to a person applying for registration in the register of accredited bodies, and
  - (b) the references to an accredited body having registration of a type mentioned in section 47(1) include references to a person applying for registration of that type in the register of accredited bodies.

### **53 Notification and review of decisions: removal from register or refusal of registration or nomination**

- (1) This section applies where the Scottish Ministers decide to—
- (a) refuse an application for registration in the register of accredited bodies,
  - (b) remove an accredited body from the register of accredited bodies,
  - (c) refuse to accept the nomination of an individual as lead signatory or countersignatory of an accredited body,
  - (d) remove all of the prescribed details of a lead signatory or countersignatory of an accredited body from the entry for the accredited body in the register of accredited bodies.

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- (2) The reference in subsection (1)(b) to removing an accredited body from the register of accredited bodies includes, in the case of an accredited body with registration of the type mentioned in section 47(1)(c)—
- (a) removing the accredited body from the register in relation only to the making of applications for Level 1 disclosures under section 2 on behalf of an individual,
  - (b) removing the accredited body from the register in relation only to the countersigning of applications for Level 2 disclosures under section 11.
- (3) The Scottish Ministers must notify the persons mentioned in subsection (4) of their decision and the reasons for the decision.
- (4) The persons are—
- (a) in the case of refusal of an application for registration, the applicant,
  - (b) in the case of removal of an accredited body from the register, the accredited body,
  - (c) in the case of refusal to accept the nomination of an individual as the lead signatory or a countersignatory of an accredited body, the individual,
  - (d) in the case of removal of all of the prescribed details of a lead signatory or countersignatory of an accredited body from the entry for the accredited body in the register of accredited bodies, the lead signatory or (as the case may be) countersignatory.
- (5) Where the Scottish Ministers decide to—
- (a) refuse to accept the nomination of an individual as the lead signatory or a countersignatory of an accredited body, or
  - (b) remove all of the prescribed details of the lead signatory or a countersignatory of an accredited body from the entry for the accredited body in the register of accredited bodies,
- they must also notify the accredited body of their decision.
- (6) If a person notified under subsection (3) considers that the information on which the decision was based may have been inaccurate, the person may apply to the Scottish Ministers for a review of their decision.

#### **54 Regulations about registration**

- (1) The Scottish Ministers may by regulations make further provision about the register of accredited bodies and registration in it.
- (2) Regulations under this section may in particular make provision for or in connection with—
- (a) the information to be included in an application for registration,
  - (b) the information to be included in the register,
  - (c) the registration of any accredited body being subject to conditions,
  - (d) the process for refusing registration or removing an accredited body from the register,
  - (e) the nomination of a lead signatory or countersignatory and acceptance or refusal by the Scottish Ministers of such a nomination,

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- (f) the removal of all of the prescribed details of a lead signatory or countersignatory of an accredited body from the entry for the accredited body in the register,
  - (g) the process for reviewing a decision to—
    - (i) refuse an application for registration,
    - (ii) remove an accredited body from the register,
    - (iii) refuse to accept the nomination of a lead signatory or countersignatory,
    - (iv) remove all of the prescribed details of a lead signatory or countersignatory of an accredited body from the entry for the accredited body in the register,
  - (h) the suspension of the registration of an accredited body,
  - (i) the period which must elapse before any person refused registration, or removed from the register, may apply again for registration.
- (3) The provision which may be made by virtue of subsection (2)(c) includes provision—
- (a) for the registration or continued registration of any accredited body to be subject to such conditions as may be specified in the regulations or, if the regulations so provide, such conditions as the Scottish Ministers consider appropriate, and
  - (b) for the Scottish Ministers to vary or revoke those conditions.

## **55 Code of practice**

- (1) The Scottish Ministers must publish a code of practice in connection with—
  - (a) the use of disclosure information provided to, or
  - (b) the exercise of any function by, accredited bodies under this Part.
- (2) The Scottish Ministers must, as soon as practicable after publication, lay the code of practice before the Scottish Parliament.
- (3) The persons mentioned in subsection (4) must comply with the code of practice.
- (4) The persons are—
  - (a) an accredited body,
  - (b) the lead signatory of an accredited body,
  - (c) a countersignatory of an accredited body,
  - (d) a disclosure information recipient.
- (5) An accredited body must take all necessary steps with a view to ensuring the compliance by each disclosure information recipient with the code of practice.
- (6) The Scottish Ministers may from time to time publish a revised code of practice, and references in this Part to a code of practice include references to a revised code of practice.
- (7) Where an accredited body, its lead signatory or countersignatory or a disclosure information recipient has failed to comply with the code of practice, the Scottish Ministers may impose conditions in relation to the registration of the accredited body.

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- (8) In this section, “disclosure information recipient” has the meaning given in section 50(6).

## **56 Sharing of Level 2 disclosure information by accredited bodies**

- (1) An accredited body may countersign an application for a Level 2 disclosure under section 11—
- (a) on its own behalf, or
  - (b) if the condition mentioned in subsection (2) is met, at the request of another person who—
    - (i) falls within any of paragraphs (a) to (c) of section 47(3) (but who is not an accredited body), or
    - (ii) is an individual who does not employ other persons in the course of business.
- (2) The condition is that the person referred to in subsection (1)(b)(i) or (ii) is asking a question about the individual who is the subject of the Level 2 disclosure for the purpose of the disclosure.
- (3) Where a Level 2 disclosure is made available to an accredited body by virtue of an application for a Level 2 disclosure made at the request of another person mentioned in subsection (1)(b)(i), the accredited body may disclose information contained in the Level 2 disclosure to that person if the body is satisfied that disclosure to the person would comply with the code of practice published under section 55.
- (4) Where a Level 2 disclosure is made available to an accredited body by virtue of an application for a Level 2 disclosure made at the request of an individual mentioned in subsection (1)(b)(ii), the accredited body—
- (a) must not disclose the information contained in the Level 2 disclosure to the individual,
  - (b) but may provide advice based on the information to the individual relating to the question referred to in subsection (2).
- (5) The Scottish Ministers may by regulations make provision about the fees that may be charged by accredited bodies in connection with countersigning an application for a Level 2 disclosure at the request of another person mentioned in subsection (1)(b)(ii).

PROSPECTIVE

### *Evidence of identity*

## **57 Evidence of identity**

- (1) A person making an application under this Part must provide the Scottish Ministers with such evidence of identity as they may require in respect of the application.
- (2) The evidence of identity that may be required under subsection (1) includes evidence of the identity of—
- (a) the applicant,
  - (b) where an application is made on behalf of an individual, that individual,

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Disclosure (Scotland) Act 2020. (See end of Document for details)*

- (c) where an application is made—
  - (i) for registration of an accredited body in the register of accredited bodies, or
  - (ii) nominating a lead signatory or countersignatories of an accredited body,  
the nominated lead signatory and countersignatories of the body.
- (3) The Scottish Ministers need not consider such an application if—
  - (a) the applicant fails to comply with a requirement under this section, or
  - (b) the evidence provided does not satisfy them as to the identity of the person in respect of whom it is required.

## **58 Power to use personal data to check identity**

- (1) The Scottish Ministers may use information provided to them by personal data holders to check evidence of identity given to them for the purposes of section 57.
- (2) Personal data holders are—
  - (a) the Registrar General of Births, Deaths and Marriages for Scotland,
  - (b) a Minister of the Crown in connection with—
    - (i) passports,
    - (ii) the keeping of records relating to immigration or visas,
    - (iii) the keeping of records of national insurance numbers,
    - (iv) the keeping of records relating to drivers and motor vehicles,
  - (c) the Department for Infrastructure in Northern Ireland in connection with the keeping of records relating to drivers and motor vehicles,
  - (d) such other persons holding data about individuals as may be prescribed.
- (3) The Registrar General of Births, Deaths and Marriages for Scotland must comply, as soon as practicable after receiving it, with any request by the Scottish Ministers to provide them with information which—
  - (a) the Registrar General holds in connection with the keeping of records of births, marriages, deaths and adoptions, and
  - (b) is relevant to the Scottish Ministers' functions under this Part.

## **59 Power to use fingerprints to check identity**

- (1) The Scottish Ministers may require an individual in respect of whom evidence of identity may be required under section 57 to have fingerprints taken in such manner, by such person and at such place, as may be prescribed for the purposes of enabling or assisting the Scottish Ministers to satisfy themselves as to the identity of the individual.
- (2) But the Scottish Ministers may require an individual to have fingerprints taken under subsection (1) only if they are not satisfied by other evidence provided under section 57(1) as to the individual's identity.
- (3) Where the Scottish Ministers require an individual to have fingerprints taken under subsection (1) in connection with an application under this Part but the individual refuses to comply with that requirement, the Scottish Ministers need not consider the application.

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*Changes to legislation: There are currently no known outstanding effects for the Disclosure (Scotland) Act 2020. (See end of Document for details)*

- (4) The Scottish Ministers must arrange for the destruction of any such fingerprints as soon as reasonably practicable after they have been used for the purposes mentioned in subsection (1).
- (5) Any person who holds in Scotland records of fingerprints for the use of police forces generally must make those records available to the Scottish Ministers for the purposes of this section.
- (6) This section does not affect the generality of section 57 in relation to any other type of evidence of identity.

### General

PROSPECTIVE

#### 60 Form and manner of applications and notices

- (1) The Scottish Ministers must determine the form and manner in which—
  - (a) any application under this Part is to be made,
  - (b) any notice or notification under this Part is to be given.
- (2) A determination under subsection (1) may in particular make provision for—
  - (a) an application to be made (and signed or countersigned), or
  - (b) a notice or notification to be given,by using electronic communications.
- (3) A determination under subsection (1) must allow an application to be made in the form of a printed or written document if the applicant so chooses.
- (4) Subsection (3) does not apply to a determination relating to an application for a Level 1 disclosure made under section 2 by an accredited body on behalf of an individual.
- (5) A determination under subsection (1) relating to an application for a Level 1 disclosure made under section 2 by an accredited body on behalf of an individual may include provision about the form and manner in which the individual's consent to the application is to be given and evidenced for the purposes of subsection (2) of that section.
- (6) The Scottish Ministers may make different determinations under this section for—
  - (a) different applications, notices or notifications, or
  - (b) other different purposes.
- (7) The Scottish Ministers must arrange for their determinations under this section to be published in such manner as they see fit.
- (8) The Scottish Ministers need not consider any application under this Part that is not made in the form and manner determined by them under this section.
- (9) In this section, “application” includes request and any statement or other document that is to accompany an application.



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*Changes to legislation:* There are currently no known outstanding effects  
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PROSPECTIVE

## 61 Fees

- (1) The Scottish Ministers may by regulations make provision for the charging of fees in respect of the exercise of their functions under this Part.
- (2) Regulations under this section may in particular provide for the charging of fees for or in connection with—
  - (a) an application for a Level 1 disclosure,
  - (b) an application for a Level 2 disclosure,
  - (c) an application for registration in the register of accredited bodies and registration in the register,
  - (d) an application nominating the lead signatory or a countersignatory of an accredited body,
  - (e) the notification of any changes relating to the prescribed details of an accredited body's lead signatory or countersignatory,
  - (f) the provision of any documentation confirming the authenticity of a certificate provided in response to an application for a Level 1 disclosure,
  - (g) a Level 1 review application,
  - (h) a Level 2 review application,
  - (i) verifying the identity of an applicant of a disclosure request.
- (3) Regulations may in particular provide for—
  - (a) different fees in different circumstances,
  - (b) reduction, waiver or refund of fees,
  - (c) the manner in which fees are to be paid.
- (4) The provision which may be made by virtue of subsection (2)(c) includes in particular provision for—
  - (a) annual or other recurring fees in respect of—
    - (i) registration in the register of accredited bodies,
    - (ii) the nomination of the lead signatory or a countersignatory of an accredited body,
  - (b) such annual or other recurring fees to be paid in advance or in arrears.
- (5) Where regulations provide for a fee to be charged in respect of any application, the Scottish Ministers need not consider the application unless the fee is paid in the manner provided for in the regulations.

PROSPECTIVE

## 62 Fees for provision of information by the chief constable

The Scottish Ministers must pay to the Scottish Police Authority such fee as they think appropriate for the provision of information to them by the chief constable in pursuance of any provision of this Part.

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### 63 Guidance for chief constable

- (1) The Scottish Ministers must issue guidance to the chief constable about the exercise of the chief constable's functions under this Part.
- (2) The Scottish Ministers may from time to time issue revised guidance, and references in this section to guidance include revised guidance.
- (3) The guidance may in particular include provision about the conduct of reviews under section 23.
- (4) Before issuing guidance under this section, the Scottish Ministers must consult the chief constable.
- (5) The chief constable must have regard to guidance issued under this section in exercising functions under this Part.

#### Commencement Information

**II** S. 63 in force at 10.12.2021 for specified purposes by S.S.I. 2021/380, reg. 2, sch.

PROSPECTIVE

### 64 Sharing of information with the chief constable

- (1) The Scottish Ministers may make available to the chief constable any information mentioned in subsection (2) that they hold in connection with the performance of their functions under this Part.
- (2) The information is—
  - (a) the name, address and date of birth of any individual,
  - (b) any other information that would enable or assist constables of the Police Service of Scotland to satisfy themselves as to the identity of an individual.
- (3) Information disclosed under subsection (1) may be used by constables of the Police Service of Scotland only for—
  - (a) the performance of the chief constable's functions under this Part, or
  - (b) the law enforcement purposes within the meaning of section 31 of the Data Protection Act 2018.

PROSPECTIVE

### 65 Sources of information

- (1) Any person who holds central records must make those records available to the Scottish Ministers for the purposes of enabling or assisting them to perform their functions under this Part.
- (2) The Scottish Ministers may by notice require any person mentioned in subsection (3) to provide them with information which they—
  - (a) believe the person holds, and

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- (b) consider is necessary to carry out their functions under this Part.
- (3) The persons are—
  - (a) an individual applying for a Level 1 or a Level 2 disclosure,
  - (b) the chief constable,
  - (c) the Principal Reporter,
  - (d) the Scottish Courts and Tribunals Service,
  - (e) a local authority,
  - (f) any other person the Scottish Ministers consider appropriate.
- (4) The chief constable must not provide information by virtue of a notice under subsection (2) if the chief constable thinks that disclosing the information would be contrary to the interests of the prevention or detection of crime.
- (5) No proceedings are competent against the Scottish Ministers by reason of an inaccuracy in the information made available or provided to them in accordance with or in pursuance of any power or duty under this Part to provide information to the Scottish Ministers in relation to their functions under this Part.

PROSPECTIVE

## 66 Delegation of functions of Scottish Ministers

- (1) The Scottish Ministers may, to such extent and subject to such conditions as they think appropriate, delegate any of their functions under this Part (other than excepted functions) to such person as they may determine.
- (2) An excepted function is a function—
  - (a) relating to the making of regulations,
  - (b) relating to the publishing or revising of a code of practice under section 55,
  - (c) relating to the laying of such a code of practice before the Scottish Parliament,
  - (d) relating to the making of a determination under section 34(1) or 60(1),
  - (e) relating to the determination of a fee under section 62,
  - (f) relating to the issuing and revising of guidance under section 63.
- (3) A delegation under subsection (1) may be varied or revoked at any time.
- (4) No proceedings are competent against a person exercising functions delegated under this section by reason of an inaccuracy in the information made available or provided to the person in accordance with or in pursuance of any power or duty under this Part to provide information to the Scottish Ministers in relation to their functions under this Part.

PROSPECTIVE

## 67 Saving: disclosure of information and records

Nothing in this Part limits any power that exists otherwise than under this Act to disclose information or to make records available.

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*Changes to legislation: There are currently no known outstanding effects*  
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PROSPECTIVE

## 68 Definition of consideration of suitability

In sections 17(1)(b) and 44(2), the references to a person (“A”) considering an individual’s suitability to carry out, or to be offered or supplied for, a type of regulated role are references to A considering the individual’s suitability—

- (a) to carry out that type of regulated role for A,
- (b) to be supplied by A to carry out that type of regulated role for another person,
- (c) for any other prescribed purpose.

## 69 Interpretation of Part 1

In this Part—

“accredited body” has the meaning given in section 46(2),

“acting in relation to a disclosure request” is to be construed in accordance with section 47(11),

the “adults’ list” means the list referred to in section 1(1)(b) of the PVG Act,

“barred from regulated roles with adults” is to be construed in accordance with section 92(2) of the PVG Act,

“barred from regulated roles with children” is to be construed in accordance with section 92(1) of the PVG Act,

“caution” means a caution given to a person in England and Wales or Northern Ireland in respect of an offence which, at the time when the caution is given, the person has admitted,

“central records” means such records of convictions, cautions or other information held for the use of police forces generally as may be prescribed,

“certificate” means any one or more documents provided in response to a particular application,

“chief constable” means the chief constable of the Police Service of Scotland,

“childhood caution”, in relation to an individual, means a caution given in respect of an offence committed when the individual was under 18 years of age,

“childhood conviction”, in relation to an individual, means a conviction for an offence committed when the individual was under 18 years of age,

“children” is to be construed in accordance with the definition of “child” in section 97(1) of the PVG Act,

“children’s hearing outcome” means anything treated as a conviction for the purposes of the Rehabilitation of Offenders Act 1974 by virtue of section 3 of that Act (special provision with respect to certain disposals by children’s hearings),

the “children’s list” means the list referred to in section 1(1)(a) of the PVG Act,

“conviction” means a conviction within the meaning of the Rehabilitation of Offenders Act 1974, but does not include a children’s hearing outcome,

“countersignatory” has the meaning given in section 51(8),

“disclosure information” has the meaning given in section 47(10),

“electronic communications” is to be construed in accordance with section 15(1) of the Electronic Communications Act 2000,

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“independent reviewer” means the independent reviewer established by section 11 of the Age of Criminal Responsibility (Scotland) Act 2019,

“lead signatory” has the meaning given in section 51(8),

“Level 1 disclosure” has the meaning given in section 1,

“Level 1 review application” means an application under section 5(1),

“Level 2 disclosure” has the meaning given in section 8,

“Level 2 review application” means an application under section 20(1),

“List A offence” means an offence listed in schedule 1,

“List B offence” means an offence listed in schedule 2,

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975,

“non-disclosable children's hearing outcome” has the meaning given in section 10,

“non-disclosable conviction” has the meaning given in section 9,

“police force” means—

- (a) the Police Service of Scotland,
- (b) a police force in England or Wales maintained under the Police Act 1996,
- (c) the Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve,

“prescribed” means prescribed by regulations made by the Scottish Ministers,

“purpose of the disclosure”, in relation to a Level 2 disclosure, is to be construed in accordance with sections 12(3) and 19(6),

“the PVG Scheme” means the scheme provided for by Part 2 of the PVG Act,

“register of accredited bodies” has the meaning given in section 46(1),

“registration” has the meaning given in section 46(2),

“regulated roles with children” has the meaning given in section 91 of the PVG Act,

“regulated roles with adults” has the meaning given in section 91 of the PVG Act,

“removable conviction” has the meaning given in section 20(6),

“reviewable information” has the meaning given in section 20(2),

“scheme record” has the meaning given in section 48 of the PVG Act,

“spent”, in relation to a conviction (including a childhood conviction) or caution, means spent for the purpose of the Rehabilitation of Offenders Act 1974; and

“unspent”, in relation to a conviction (including a childhood conviction) or caution, is to be construed accordingly,

“statutory office-holder” means a person appointed to an office by virtue of an enactment,

“type of regulated role” is to be construed in accordance with section 91(4) and (5) of the PVG Act.

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#### **Commencement Information**

**12** S. 69 in force at 10.12.2021 for specified purposes by S.S.I. 2021/380, reg. 2, sch.

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*Status: This version of this Act contains provisions that are prospective.  
Changes to legislation: There are currently no known outstanding effects  
for the Disclosure (Scotland) Act 2020. (See end of Document for details)*

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## PART 2

### PROTECTION OF VULNERABLE GROUPS

PROSPECTIVE

#### *Scheme membership*

#### **70 Participation in Scheme**

For section 45 (participation in Scheme) of the PVG Act substitute—

##### **“45 Participation in Scheme**

- (1) An individual aged 16 or over may apply to Ministers—
  - (a) to join the Scheme and become a member of the Scheme (a “scheme member”), or
  - (b) if the individual is an existing scheme member, to renew that membership.
- (2) An individual may participate in the Scheme in relation to—
  - (a) regulated roles with children,
  - (b) regulated roles with adults, or
  - (c) both types of regulated role.
- (3) Ministers must allow an individual to participate in the Scheme in relation to a type of regulated role if the individual is—
  - (a) not barred from that type of regulated role, and
  - (b) aged 16 or over.”.

#### **71 Duration of Scheme membership**

After section 45 of the PVG Act insert—

##### **“45A Duration of Scheme membership**

- (1) A scheme member participates in the Scheme (unless earlier removed from the Scheme) in relation to a type of regulated role until the end of the period of 5 years beginning with the day on which—
  - (a) the scheme member joins the Scheme in relation to that type of regulated role, or (as the case may be)
  - (b) the scheme member's membership of the Scheme in relation to that type of regulated role is renewed.
- (2) In this section and section 45B, the period mentioned in subsection (1) is referred to as the “membership period”.
- (3) No later than 3 months before the end of the membership period (the “expiry date”)—

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- (a) Ministers must send written notice to the persons mentioned in subsection (4)—
    - (i) of the expiry date, and
    - (ii) that the scheme member's participation in the Scheme in relation to the type of regulated role concerned will end on that date unless the scheme member's membership of the Scheme is renewed,
  - (b) may send written notice of those facts to any person other than an organisation for whom Ministers know the scheme member is carrying out a regulated role of the type concerned.
- (4) The persons referred to in subsection (3)(a) are—
- (a) the scheme member,
  - (b) any organisation for whom Ministers know the scheme member is carrying out a regulated role of the type concerned,
  - (c) any personnel supplier whom Ministers know has offered or supplied the scheme member to carry out a regulated role of the type concerned,
  - (d) any relevant regulatory body (within the meaning of section 13A(8)) whom Ministers think it would be appropriate to notify.
- (5) Subsection (6) applies where—
- (a) a scheme member participates in the Scheme in relation to both types of regulated role, and
  - (b) notice is given under subsection (3)(a) to an organisation, personnel supplier or relevant regulatory body, or under subsection (3)(b), in relation to only one of the types of regulated role.
- (6) Where this subsection applies, the notice must not disclose any information relating to the scheme member's participation in the Scheme in relation to the other type of regulated role (or that the scheme member participates in the Scheme in relation to that other type of regulated role).
- (7) If a scheme member has applied to renew the scheme member's membership of the Scheme in relation to a type of regulated role before the expiry date but Ministers have not, as at the expiry date, determined the application, the scheme member's participation in the Scheme in relation to that type of regulated role is to continue in effect until the application is determined.”.

## **72 Failure to apply for renewal of Scheme membership**

After section 45A of the PVG Act (inserted by section 71) insert—

### **“45B Failure to apply for renewal of Scheme membership**

- (1) This section applies where a scheme member does not apply to renew the scheme member's membership of the Scheme in relation to a type of regulated role before the end of the membership period.
- (2) Ministers must extend the scheme member's participation in the Scheme in relation to that type of regulated role for a period of 4 weeks beginning with the end of the membership period (the “extended membership period”).

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- (3) If before the end of the extended membership period—
- (a) Ministers are satisfied that the scheme member is not carrying out a regulated role of that type, Ministers must remove the scheme member from the Scheme in relation to that type of regulated role, or
  - (b) Ministers are not so satisfied—
    - (i) they must send written notice to the persons mentioned in subsection (5) of the expiry of the extended membership period and that the scheme member's participation in the Scheme in relation to that type of regulated role is to end on the expiry of that period unless the scheme member's membership of the Scheme is renewed,
    - (ii) they may send written notice of those facts to any person other than an organisation for whom Ministers know the scheme member is carrying out a regulated role of the type in relation to which the member participates in the Scheme, and
    - (iii) they may extend the scheme member's participation in the Scheme in relation to that type of regulated role for an additional period of 6 months beginning with the end of the extended membership period (the “discretionary membership period”).
- (4) Where Ministers decide under subsection (3)(b)(iii) to extend the scheme member's participation in the Scheme for the discretionary membership period—
- (a) they must send written notice to the persons mentioned in subsection (5)—
    - (i) of that fact, and
    - (ii) that the scheme member's participation in the Scheme in relation to the type of regulated role concerned is to end on the expiry of that period unless the scheme member's membership of the Scheme is renewed, and
  - (b) they may send written notice of those facts to any person other than an organisation for whom Ministers know the scheme member is carrying out a regulated role of the type in relation to which the member participates in the Scheme.
- (5) The persons referred to in subsections (3)(b)(i) and (4)(a) are—
- (a) the scheme member,
  - (b) any organisation for whom Ministers know the scheme member is carrying out a regulated role of the type in relation to which the scheme member participates in the Scheme,
  - (c) any personnel supplier whom Ministers know has offered or supplied the scheme member to carry out a regulated role of the type in relation to which the scheme member participates in the Scheme,
  - (d) any relevant regulatory body (within the meaning of section 13A(8)) whom Ministers think it would be appropriate to notify.
- (6) If—
- (a) the scheme member does not apply to renew the scheme member's membership of the Scheme in relation to that type of regulated role before the end of the discretionary membership period, and



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(b) Ministers are satisfied that the scheme member is not carrying out a regulated role of that type,

Ministers must remove the scheme member from the Scheme in relation to that type of regulated role.

(7) If—

(a) the scheme member does not apply to renew the scheme member's membership of the Scheme in relation to that type of regulated role before the end of the discretionary membership period, and

(b) Ministers have reasonable grounds to believe that the scheme member is carrying out a regulated role of that type,

Ministers must consider listing the scheme member in the children's list or the adults' list (or both) if they consider that it may be appropriate for the scheme member to be included in that list (or both of those lists).

(8) For the avoidance of doubt, subsection (7) applies in relation to the scheme member regardless of the type of regulated role in relation to which the scheme member participates in the Scheme.

(9) If the scheme member has applied, during the extended membership period or the discretionary membership period, to renew the scheme member's membership of the Scheme in relation to a type of regulated role but Ministers have not by the end of such a period determined the application, the scheme member's participation in the Scheme in relation to that type of regulated role is to continue in effect until the application is determined.

(10) Subsections (5) and (6) of section 45A apply for the purposes of this section as they apply for the purposes of that section except that the reference in subsection (5)(b) of that section—

(a) to a notice given under subsection (3)(a) of that section is to be read as a reference to a notice given under subsection (3)(b)(i) or (4)(a) of this section, and

(b) to a notice given under subsection (3)(b) of that section is to be read as a reference to a notice given under subsection (3)(b)(ii) or (4)(b) of this section.

(11) Ministers need not consider—

(a) an application for a Level 2 disclosure (within the meaning of section 8(1) of the Disclosure (Scotland) Act 2020) where section 17 of that Act applies, or

(b) a request for confirmation of scheme membership under section 54, that is made by the scheme member during any discretionary membership period of the scheme member.”.

## **73 Compulsory Scheme membership**

(1) The PVG Act is amended as follows.

(2) After section 45B (inserted by section 72) insert—

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#### **“45C Individuals must be scheme members to carry out regulated roles**

- (1) It is an offence for an individual to carry out, or to agree to carry out, any type of regulated role unless the individual participates in the Scheme in relation to that type of regulated role.
- (2) For the purposes of subsection (1), an individual is not to be treated as having agreed to carry out a regulated role if the individual's agreement is subject to the individual's participating in the Scheme in relation to that type of role.
- (3) It is a defence for an individual charged with an offence under subsection (1)
  - (a) to prove that the individual did not know, and could not reasonably be expected to have known, that the role concerned was a regulated role, and
  - (b) where the individual participated in the Scheme in relation to the type of regulated role concerned and the individual's membership of the Scheme in relation to that type of regulated role was not renewed, to prove that the individual did not know, and could not reasonably be expected to have known, that the individual's membership of the Scheme had not been renewed.
- (4) Subsection (1) does not apply to an individual who is—
  - (a) barred from the type of regulated role concerned (but see section 34),
  - (b) aged under 16.

#### **45D Organisations not to use individuals for regulated roles without confirming scheme membership**

- (1) It is an offence for an organisation to offer any type of regulated role to an individual unless the organisation has received a Level 2 disclosure in pursuance of a request under section 18(1)(a) of the Disclosure (Scotland) Act 2020 containing a statement confirming that the individual participates in the Scheme in relation to that type of regulated role.
- (2) For the purposes of subsection (1), an organisation is not to be treated as having offered a regulated role to an individual if the offer is subject to the organisation receiving a Level 2 disclosure as mentioned in subsection (1).
- (3) Subsection (1) does not apply in relation to an individual who is—
  - (a) barred from the type of regulated role concerned (but see section 35),
  - (b) aged under 16.

#### **45E Power to require organisations to stop using individuals for regulated roles without scheme membership**

- (1) Ministers may by regulations—
  - (a) prohibit an organisation from permitting an individual to carry out a regulated role,
  - (b) require an organisation to remove an individual from a regulated role,

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where the individual does not participate in the Scheme in relation to that type of regulated role.

- (2) Regulations under subsection (1) may in particular—
  - (a) impose prohibitions or requirements—
    - (i) in relation to particular types of organisations,
    - (ii) in relation to particular kinds of regulated roles,
  - (b) otherwise limit the purposes for which the prohibition or requirement is to apply (or the area in which it is to apply) in such manner as Ministers think appropriate.
- (3) An organisation which fails to comply with regulations made under subsection (1) commits an offence.
- (4) It is a defence for an organisation charged with an offence under subsection (3) to prove that it did not know, and could not reasonably be expected to have known, that the individual does not participate in the Scheme in relation to that type of regulated role.

#### **45F Personnel suppliers not to supply individuals for regulated roles without confirming scheme membership**

- (1) Subsection (2) applies where a personnel supplier knows or has reason to believe that an organisation will make arrangements for an individual to carry out a type of regulated role.
- (2) Where this subsection applies, it is an offence for the personnel supplier to offer or supply the individual to the organisation in relation to that type of regulated role unless the personnel supplier has received a Level 2 disclosure in pursuance of a request under section 18(1)(a) of the Disclosure (Scotland) Act 2020 containing a statement confirming that the individual participates in the Scheme in relation to that type of regulated role.
- (3) Subsection (2) does not apply in relation to an individual who is—
  - (a) barred from the type of regulated role concerned (but see section 36),
  - (b) aged under 16.

#### **45G Penalties for offences relating to regulated roles by individuals not in Scheme**

A person who commits an offence under section 45C, 45D, 45E or 45F is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”.
- (3) In section 100 (orders and regulations), in subsection (4), after the entry in the list for section 35(2) insert— “ Section 45E(1) ”.

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*Status: This version of this Act contains provisions that are prospective.  
Changes to legislation: There are currently no known outstanding effects  
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PROSPECTIVE

*Regulated roles***74 Regulated roles**

- (1) The PVG Act is amended as follows.
- (2) For section 91 (regulated work) substitute—

**“91 Regulated roles**

- (1) A regulated role means a regulated role with children or adults.
- (2) A regulated role with children has the meaning given in schedule 2.
- (3) A regulated role with adults has the meaning given in schedule 3.
- (4) In this Act, there are two types of regulated roles—
  - (a) regulated roles with children, and
  - (b) regulated roles with adults.
- (5) References in this Act to types of regulated roles are to be construed accordingly.”.
- (3) For schedule 2 (regulated work with children) substitute the schedule contained in schedule 3.
- (4) For schedule 3 (regulated work with adults) substitute the schedule contained in schedule 4.

**75 Meaning of “protected adult”**

- (1) Section 94 (meaning of “protected adult”) of the PVG Act is amended as follows.
- (2) In subsection (1) for the words from “an individual” to the end of that subsection substitute “—
  - (a) an individual aged 18 or over who, by reason of physical or mental disability, illness, infirmity or ageing—
    - (i) has an impaired ability to protect themselves from physical or psychological harm, or
    - (ii) requires assistance with the activities of daily living,
  - (b) in relation to a regulated role with adults that involves the carrying out of activities mentioned in paragraph 17 of Part 2 of schedule 3, an individual aged 18 or over who—
    - (i) is homeless (within the meaning of section 24 of the Housing (Scotland) Act 1987), or
    - (ii) has experienced, is experiencing or is at risk of experiencing domestic abuse,
  - (c) in relation to a regulated role with adults that involves the carrying out of activities mentioned in one or more of paragraphs 6 to 12 of

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*Changes to legislation: There are currently no known outstanding effects for the Disclosure (Scotland) Act 2020. (See end of Document for details)*

- Part 2 of schedule 3 (health care), an individual aged 18 or over who is being provided with a prescribed health service, or
- (d) in relation to a regulated role with adults that involves the carrying out of such of the activities mentioned in Part 2 of schedule 3 as may be prescribed, an individual aged 18 or over who is being provided with—
- (i) a prescribed support service,
  - (ii) a prescribed adult placement service,
  - (iii) a prescribed care home service,
  - (iv) a prescribed housing support service,
  - (v) a prescribed community care service, or
  - (vi) a prescribed welfare service.”.
- (3) After subsection (2) insert—
- “(2A) In subsection (1)(b)(ii), “domestic abuse” means behaviour (whether or not amounting to a criminal offence) that—
- (a) is perpetrated between partners or ex-partners, whether in the home or elsewhere or by means of electronic or other forms of communications, and
  - (b) involves any form of physical, verbal, sexual, psychological, emotional or financial abuse of one of the partners or ex-partners by the other.
- (2B) For the purposes of subsection (2A), a person is a partner of another person if they are—
- (a) married to each other,
  - (b) civil partners of each other,
  - (c) living with each other as if they were married to each other, or
  - (d) otherwise in an intimate relationship with each other,
- and the references to ex-partners are to be construed accordingly.”.
- (4) In subsection (3)—
- (a) in paragraph (a), for “paragraph (a) of subsection (1)” substitute “ sub-paragraphs (i) to (iv) of subsection (1)(d) ”,
  - (b) paragraphs (b) and (c) are repealed.
- (5) In subsection (4)—
- (a) after “In” insert “ sub-paragraph (v) of ”,
  - (b) the definition of “direct payment” is repealed.
- (6) In subsection (5), for “subsection (1)(d)” substitute “ sub-paragraph (vi) of subsection (1)(d) ”.

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*Status: This version of this Act contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects*  
*for the Disclosure (Scotland) Act 2020. (See end of Document for details)*

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*Scheme members under consideration for listing*

PROSPECTIVE

**76 Conditions imposed on scheme members under consideration for listing**

- (1) The PVG Act is amended as follows.
- (2) After section 13 insert—

**“13A Conditions imposed on scheme members under consideration for listing**

- (1) Where Ministers are considering whether to list a scheme member by virtue of sections 10 to 13 or section 45B(7), they may impose such conditions on the scheme member as—
  - (a) may be prescribed, and
  - (b) they consider necessary for the protection of the public or otherwise in the public interest.
- (2) Regulations under subsection (1)(a) may in particular provide that Ministers may—
  - (a) restrict the scheme member from carrying out a regulated role,
  - (b) require that the scheme member may carry out a regulated role only under the supervision of another scheme member whom Ministers are not considering whether to list by virtue of sections 10 to 13 or section 45B(7),
  - (c) require that the scheme member may carry out only a regulated role of such description as may be specified by Ministers,
  - (d) require the scheme member to provide to them information relating to any regulated role which the scheme member is carrying out, or is to carry out, for a person or individual who is not an organisation or a personnel supplier.
- (3) Ministers may impose a condition under subsection (1) only on the basis of—
  - (a) information which caused them to consider listing the scheme member,
  - (b) information relating to the scheme member which they obtain—
    - (i) in pursuance of a requirement made under any of sections 18 to 20, or
    - (ii) otherwise in performing their functions in relation to the Scheme.
- (4) A condition imposed under subsection (1) applies for the prescribed period beginning with the day on which Ministers impose the condition on the scheme member and ceases to apply at the end of that period unless it is confirmed by the sheriff under section 13B.
- (5) Where Ministers decide under subsection (1) to impose a condition on a scheme member, they must notify the persons mentioned in subsection (6) of—

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- (a) that fact, and
  - (b) the details of the condition.
- (6) The persons are—
- (a) the scheme member,
  - (b) an organisation for whom Ministers know the scheme member is carrying out, or is seeking or agreeing to carry out, a regulated role,
  - (c) a personnel supplier whom Ministers know has offered or supplied the scheme member to carry out a regulated role,
  - (d) any relevant regulatory body whom Ministers think it would be appropriate to notify under subsection (5), and
  - (e) the chief constable.
- (7) In addition, Ministers must inform the scheme member of the reason for imposing the condition.
- (8) In subsection (6)(d) (and section 13B(9)(c)), a “relevant regulatory body” is—  
The General Teaching Council for Scotland,  
Healthcare Improvement Scotland,  
The Scottish Social Services Council,  
Social Care and Social Work Improvement Scotland,  
any other person specified in regulations made by Ministers.
- (9) In this section (and in sections 13B and 13C), “condition” includes restriction or requirement.

### **13B Application to sheriff for confirmation of conditions**

- (1) Ministers may apply to the sheriff for confirmation of a condition imposed on a scheme member under section 13A(1).
- (2) An application under subsection (1) must be made before the expiry of the period referred to in section 13A(4).
- (3) Where an application under subsection (1) is made, that period is to be treated for the purposes of section 13A(4) as not having ended until the application is determined.
- (4) In considering an application under subsection (1), the sheriff may—
  - (a) confirm the condition (with or without variation),
  - (b) remove the condition, or
  - (c) impose another condition.
- (5) The sheriff may only—
  - (a) make a variation to a condition under subsection (4)(a) if the variation would result in a condition that could have been imposed by Ministers under section 13A(1), or
  - (b) impose a condition under subsection (4)(c) if the condition is one that could have been imposed by Ministers under section 13A(1).
- (6) If the sheriff confirms (with or without variation) the condition under paragraph (a) of subsection (4) or imposes another condition under

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paragraph (c) of that subsection, that condition applies until Ministers make a decision under section 15 or, as the case may be, 16.

- (7) If the sheriff removes the condition under subsection (4)(b), the condition ceases to apply from the date of the sheriff's decision.
- (8) The scheme member is entitled to be a party to proceedings on an application under subsection (1).
- (9) Ministers must notify the following persons of the sheriff's decision under subsection (4)—
  - (a) the scheme member,
  - (b) an organisation (or other person) for whom they know the scheme member is carrying out, or seeking or agreeing to carry out, a regulated role,
  - (c) any relevant regulatory body whom Ministers think it would be appropriate to notify of the decision,
  - (d) the chief constable.
- (10) For the purposes of subsection (2), an application is made when it is lodged with the sheriff clerk.
- (11) Proceedings on an application under subsection (1) may take place in private if the sheriff considers it appropriate in all the circumstances.

### **13C Breach of conditions: offences**

- (1) It is an offence for a scheme member on whom a condition is imposed under section 13A(1) to fail to comply with the condition.
  - (2) It is an offence for a person mentioned in subsection (3) to knowingly do anything, or fail to do anything, that results in a scheme member failing to comply with a condition imposed on the scheme member under section 13A(1).
  - (3) The persons referred to in subsection (2) are—
    - (a) an organisation for whom the scheme member is carrying out a regulated role,
    - (b) a personnel supplier who has offered or supplied the scheme member to carry out a regulated role.
  - (4) It is a defence for a person charged with an offence under subsection (1) or (2) to prove that the person did not know, and could not reasonably be expected to have known, that a condition was imposed on the scheme member.
  - (5) A person who commits an offence under subsection (1) or (2) is liable—
    - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
    - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both)."
- (3) In section 100 (orders and regulations), in subsection (4), before the entry in the list for section 14(3) insert— “ Section 13A(1)(a) ”.



*Status: This version of this Act contains provisions that are prospective.  
Changes to legislation: There are currently no known outstanding effects  
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PROSPECTIVE

**77 Notice of consideration for listing**

- (1) Section 30 (notice of listing etc.) of the PVG Act is amended as follows.
- (2) In subsection (3)—
  - (a) in paragraph (b), at the end insert “ and any personnel supplier whom they know has offered or supplied the scheme member to carry out a regulated role with children, ”,
  - (b) in paragraph (c), at the end (and before the word “and” immediately following that paragraph) insert “ and any personnel supplier whom they know has offered or supplied the scheme member to carry out a regulated role with adults, ”.
- (3) After subsection (3) insert—

“(3A) Subsection (3B) applies where—

  - (a) Ministers are considering whether to list an individual by virtue of sections 10 to 13 or section 45B(7), and
  - (b) they know that the individual is carrying out a regulated role with children or, as the case may be, a regulated role with adults for a person other than an organisation.

(3B) Where this subsection applies, Ministers may notify the person—

  - (a) that they are considering whether to list the individual in the children's list or, as the case may be, in the adults' list, and
  - (b) of the details of any conditions that Ministers have imposed under section 13A(1) or, if no such conditions have been imposed, of that fact.”.

(3C) After considering whether to list an individual as mentioned in subsection (3A)(a), Ministers may notify their decision (whether to list the individual or not to do so) to any person other than an organisation for whom they know the individual is carrying out a regulated role with children or, as the case may be, a regulated role with adults.”.
  - (4) In subsection (5), after “(2)” insert “, (3B), (3C) ”.

**78 Withdrawal from Scheme when under consideration for listing**

- (1) The PVG Act is amended as follows.
- (2) After section 59 insert—

**“59A Withdrawal from Scheme when under consideration for listing**

(1) Where—

  - (a) Ministers remove an individual who is a scheme member from the Scheme under section 59, and
  - (b) at the time of the removal, they are considering whether to list the individual by virtue of sections 10 to 13 or section 45B(7),

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they may decide not to continue to consider whether to list the individual.

(2) Where Ministers decide under subsection (1) not to continue to consider whether to list an individual, that decision is not to be treated as a decision not to list the individual after considering whether to do so for the purposes of subsection (3C) or (4) of section 30 (and accordingly no notice of the decision under subsection (1) is to be given under either of those subsections of that section).”.

(3) In section 60 (notice of removal), after subsection (2) insert—

“(2A) Where Ministers decide under section 59A(1) not to continue to consider whether to list the individual a notice under subsection (1) must also give notice of that fact.”.

#### **Commencement Information**

**I3** S. 78 in force at 10.12.2021 by S.S.I. 2021/380, reg. 2, sch. (with reg. 3)

PROSPECTIVE

### *Notice of barred status*

#### **79 Notice of barred status**

After section 46 of the PVG Act insert—

##### **“46A Notice of barred status**

- (1) Subsection (2) applies where—
- (a) an accredited body has countersigned an application for a Level 2 disclosure,
  - (b) the individual applying for the disclosure seeks to participate in the Scheme,
  - (c) the purpose of the disclosure is to enable the accredited body (or any person for whom the body acts) to consider the individual's suitability to carry out, or to be offered or supplied for, a type of regulated role, and
  - (d) Ministers have refused to allow the individual to participate in the Scheme in relation to that type of regulated role because the individual is—
    - (i) barred from regulated roles with children, or (as the case may be)
    - (ii) barred from regulated roles with adults.
- (2) Where this subsection applies, Ministers must notify the accredited body that they have refused to allow the individual to participate in the Scheme in relation to that type of regulated role because the individual is—
- (a) barred from regulated roles with children, or (as the case may be)
  - (b) barred from regulated roles with adults.

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- (3) In this section—  
“accredited body” has the meaning given in section 46(2) of the  
Disclosure (Scotland) Act 2020,  
“Level 2 disclosure” has the meaning given in section 8 of that Act.”.

### *Listing*

PROSPECTIVE

#### **80 Reference by chief constable**

- (1) The PVG Act is amended as follows.  
(2) After section 6 insert—

##### **“6A Reference by chief constable**

The chief constable must give Ministers any prescribed information that the chief constable holds in relation to an individual whom the chief constable considers is or has been carrying out a type of regulated role while not participating in the Scheme in relation to that type of regulated role.”.

- (3) After section 10(1)(a) (consideration whether to list: organisational referrals etc.) insert—  
“(aa) where prescribed information relating to an individual has been given to Ministers in pursuance of section 6A, or”.

PROSPECTIVE

#### **81 Removal of references by court**

- (1) The PVG Act is amended as follows.  
(2) The following provisions are repealed—  
(a) section 7,  
(b) section 11,  
(c) section 32(1) and (2),  
(d) schedule 1,  
(e) in the table in schedule 5, the entry relating to “relevant offence”.  
(3) In section 32 (relevant offences etc.)—  
(a) in subsection (4), the word “7,” is repealed,  
(b) the title of the section becomes “ Individual not criminally responsible or unfit for trial: order treated as conviction ”.

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## PROSPECTIVE

**82 Reference by councils or integration joint boards**

- (1) Section 8 (reference by certain other persons) of the PVG Act is amended as follows.
- (2) In subsection (2)—
  - (a) before the entry in the list for the General Teaching Council for Scotland insert — “ Councils ”,
  - (b) after the entry in the list for Healthcare Improvement Scotland insert— “ An integration joint board established by order under section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014 ”.
- (3) In subsection (3), before paragraph (a) insert—
  - “(za) in relation to a council or an integration joint board mentioned in subsection (2), such functions as are conferred on either of them by the Social Work (Scotland) Act 1968, the Children (Scotland) Act 1995, the Adults with Incapacity (Scotland) Act 2000, the Adult Support and Protection (Scotland) Act 2007 or the Children and Young People (Scotland) Act 2014,”.

**83 Application for removal from list**

- (1) Section 25 (application for removal from list) of the PVG Act is amended as follows.
- (2) In subsection (3), for paragraph (b) substitute—
  - “(b) Ministers are satisfied that there has been a relevant change in the applicant's circumstances since the applicant—
    - (i) was listed, or
    - (ii) last made an application for removal from the list under this section.”.
- (3) After subsection (4) insert—
  - “(4A) For the purposes of subsection (3)(b), a change in the applicant's circumstances is relevant if it is relevant to the question whether the applicant is no longer unsuitable to carry out regulated roles with children or, as the case may be, regulated roles with adults.”.
- (4) Subsections (5) and (6) are repealed.

**Commencement Information**

**14** S. 83 in force at 10.12.2021 by S.S.I. 2021/380, reg. 2, sch. (with reg. 4)

**84 Ministers' powers to remove from list**

- (1) The PVG Act is amended as follows.
- (2) In section 28 (late representations), after subsection (1) insert—

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*Changes to legislation: There are currently no known outstanding effects for the Disclosure (Scotland) Act 2020. (See end of Document for details)*

- “(1A) This section also applies where an individual listed under section 15 or 16 (other than one mentioned in subsection (1))—
- (a) seeks to make representations to Ministers as to why the individual should not have been listed, and
  - (b) Ministers consider that it is appropriate in all the circumstances to allow the representations to be made.”
- (3) In section 29 (removal from list), in subsection (1)(b)—
- (a) the words “they are satisfied that the individual should not have been listed” become sub-paragraph (i), and
  - (b) at the end of that sub-paragraph insert “, or
    - (ii) they are otherwise satisfied that the individual is no longer unsuitable to carry out regulated roles with children or, as the case may be, regulated roles with adults.”

#### Commencement Information

**I5** S. 84 in force at 10.12.2021 by S.S.I. 2021/380, reg. 2, sch. (with reg. 4)

## 85 Appeals and removals: information power

- (1) The PVG Act is amended as follows.
- (2) In section 26 (determination of application for removal from list), subsection (3) is repealed.
- (3) After section 29 insert—

*“Appeals and removals: information powers*

### 29A Appeals and removals: application of sections 18 to 20

- (1) Sections 18 to 20 apply—
  - (a) for any of the purposes specified in subsection (2) as they apply for the purpose of enabling or assisting Ministers to decide whether to list an individual,
  - (b) with the modifications that are specified in subsection (2) in relation to the purpose.
- (2) The purposes (and modifications) are—
  - (a) enabling or assisting Ministers to consider, in relation to an appeal under section 21, 22 or 23, whether an individual should have been listed (with references to deciding whether to list an individual being read as references to deciding whether the individual should have been listed),
  - (b) enabling or assisting Ministers to determine under section 26 an application for removal from the children's list or the adults' list (with references to deciding whether to list an individual being read as

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- references to determining whether to remove an individual from the list),
- (c) enabling or assisting Ministers to consider, in relation to an appeal under section 27, whether an application for removal from the children's list or the adults' list should have been refused under section 26 (with references to deciding whether to list an individual being read as references to deciding whether an application for removal from the list should have been refused),
  - (d) enabling or assisting Ministers to decide under section 28 or 29 whether to remove an individual from the children's list or the adults' list (with references to deciding whether to list an individual being read as references to deciding whether an individual should not have been listed or is no longer unsuitable to carry out regulated roles with children or, as the case may be, regulated roles with adults).”. Confirmation of PVG Scheme membership”.

#### Commencement Information

**16** S. 85 in force at 10.12.2021 by S.S.I. 2021/380, reg. 2, sch. (with reg. 4)

PROSPECTIVE

### *Confirmation of PVG Scheme membership*

#### **86 Confirmation of scheme membership under the PVG Act**

- (1) The PVG Act is amended as follows.
- (2) For section 46 (statement of scheme membership) substitute—

#### **“46 Confirmation of scheme membership**

- (1) Ministers must provide a confirmation of scheme membership to each scheme member.
- (2) A confirmation of scheme membership is a document which—
  - (a) specifies the type of regulated role in relation to which the scheme member participates in the Scheme,
  - (b) confirms that the scheme member is not barred from that type of role,
  - (c) if Ministers are considering whether to list the member in relation to that type of role—
    - (i) states that fact, and
    - (ii) sets out details of any conditions that Ministers have imposed under section 13A(1) or, if no such conditions have been imposed, states that fact, and
  - (d) contains such other information about the scheme member as may be prescribed.
- (3) Ministers need not comply with subsection (1) where, at the same time as the individual applies to join the scheme, the individual makes an application

*Status: This version of this Act contains provisions that are prospective.*

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under section 11 of the Disclosure (Scotland) Act 2020 for a Level 2 disclosure where section 17 of that Act applies.”.

(3) For section 54 (disclosure of scheme membership) substitute—

**“54 Provision of confirmation of scheme membership to third parties**

(1) Where—

(a) a scheme member requests that Ministers make a confirmation of scheme membership available to such other person (a “third party”) as the member specifies in the request, and

(b) the conditions in subsection (2) are satisfied,

Ministers must comply with the request.

(2) The conditions are that—

(a) the request includes a statement referred to in subsection (3),

(b) the request specifies the type of regulated role in relation to which it is made, and

(c) the scheme member participates in the Scheme in relation to that type of regulated role.

(3) The statement is a statement by the scheme member that the confirmation of scheme membership is requested for the purpose of enabling or assisting the third party (or any other person for whom the third party acts) to consider the member's suitability to carry out, or to be offered or supplied for, the type of regulated role in relation to which the member participates in the Scheme.”.

*Miscellaneous*

**87 Retention of scheme records after removal**

In section 61 (retention of scheme records after removal) of the PVG Act, after subsection (2) insert—

“(3) Where Ministers decide under section 59A(1) not to continue to consider whether to list an individual, Ministers may keep any information received by them when considering whether to list the individual for the purposes of enabling or assisting them to perform their functions under this Act.”.

**Commencement Information**

I7 S. 87 in force at 10.12.2021 by S.S.I. 2021/380, reg. 2, sch.

**88 Offences outside Scotland**

(1) The PVG Act is amended as follows.

(2) After section 37 insert—

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*Changes to legislation: There are currently no known outstanding effects for the Disclosure (Scotland) Act 2020. (See end of Document for details)*

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### “37A Offences outside Scotland

- (1) This section applies where an offence is committed under section 34, 35 or 36 outside Scotland.
  - (2) The person committing the offence may be prosecuted, tried and punished for the offence—
    - (a) in a sheriff court district in which the person is apprehended or in custody, or
    - (b) in a sheriff court district determined by the Lord Advocate, as if the offence had been committed in that district.
  - (3) The offence is, for all purposes incidental to or consequential on the trial and punishment, deemed to have been committed in that district.”
- (3) After section 45G (as inserted by section 73) insert—

### “47H Offences outside Scotland

- (1) This section applies where an offence is committed under section 45C, 45D, 45E or 45F outside Scotland.
- (2) The person committing the offence may be prosecuted, tried and punished for the offence—
  - (a) in a sheriff court district in which the person is apprehended or in custody, or
  - (b) in a sheriff court district determined by the Lord Advocate, as if the offence had been committed in that district.
- (3) The offence is, for all purposes incidental to or consequential on the trial and punishment, deemed to have been committed in that district.”

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#### Commencement Information

**18** S. 88(1)(2) in force at 10.12.2021 by S.S.I. 2021/380, reg. 2, **sch.**

## 89 Guidance for chief constable

After section 84 of the PVG Act insert—

### “84A Guidance for chief constable

- (1) The Scottish Ministers must issue guidance to the chief constable about the exercise of the chief constable's functions under Parts 1 and 2 of this Act.
- (2) The Scottish Ministers may from time to time issue revised guidance, and references in this section to guidance include revised guidance.
- (3) Before issuing guidance under this section, the Scottish Ministers must consult the chief constable.



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(4) The chief constable must have regard to guidance issued under this section in exercising functions under Part 1 or 2 of this Act.

(5) This section does not affect the generality of section 84.”.

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**Commencement Information**

**I9** S. 89 in force at 10.12.2021 for specified purposes by S.S.I. 2021/380, reg. 2, sch.

**I10** S. 89 in force at 1.4.2023 in so far as not already in force by S.S.I. 2023/79, reg. 2

**90 Meaning of “conviction”**

(1) The PVG Act is amended as follows.

(2) In section 97(1) (general interpretation), after the definition of “conduct” insert—

““conviction” means a conviction within the meaning of the Rehabilitation of Offenders Act 1974; and references to “convicted” (other than in section 14) are to be construed accordingly.”.

(3) In schedule 5 (index), at the appropriate place insert—

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“conviction, convicted (other than in section 14) section 97(1)”.

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**Commencement Information**

**I11** S. 90 in force at 10.12.2021 by S.S.I. 2021/380, reg. 2, sch.

**PART 3**

GENERAL

**91 Regulations**

(1) Any power of the Scottish Ministers to make regulations under this Act includes power to make—

(a) incidental, supplementary, consequential, transitional, transitory or saving provision,

(b) different provision for different purposes.

(2) Regulations under section 9(3), 38(1) or 39(1) are subject to the affirmative procedure.

(3) Regulations under section 92(1) containing provisions which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.

(4) All other regulations under this Act are subject to the negative procedure.

(5) This section does not apply to regulations under section 97(2).

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Disclosure (Scotland) Act 2020. (See end of Document for details)*

## 92 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
- (2) Regulations under subsection (1) may modify any enactment (including this Act).

## 93 Consequential and minor modifications

In schedule 5—

- (a) Part 1 contains modifications of enactments in consequence of Part 1.
- (b) Part 2 contains modifications of enactments in consequence of Part 2.
- (c) Part 3 contains minor modifications of enactments and other modifications in consequence of this Act.

### Commencement Information

**I12** S. 93 in force at 10.12.2021 for specified purposes by S.S.I. 2021/380, reg. 2, sch.

## 94 Individual culpability where organisation commits offence

- (1) This section applies where—
  - (a) an offence under this Act is committed by a relevant organisation, and
  - (b) the commission of the offence—
    - (i) involves consent or connivance on the part of a responsible individual, or
    - (ii) is attributable to neglect on the part of a responsible individual.
- (2) The responsible individual (as well as the relevant organisation) commits the offence.
- (3) For the purposes of this section—
  - (a) “relevant organisation” means an organisation listed in the first column of the table in subsection (4),
  - (b) “responsible individual” means, in relation to a relevant organisation—
    - (i) an individual falling within the corresponding entry in the second column of the table in subsection (4), or
    - (ii) an individual purporting to act in the capacity of an individual falling within the corresponding entry.
- (4) The table is as follows—

### *Organisation*

company as mentioned in section 1 of the Companies Act 2006

limited liability partnership

### *Individual*

director, manager, secretary or other similar officer

member, where the company's affairs are managed by its members

member

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*Status: This version of this Act contains provisions that are prospective.  
Changes to legislation: There are currently no known outstanding effects  
for the Disclosure (Scotland) Act 2020. (See end of Document for details)*

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other partnership	partner
any other body or association	individual who is concerned in the management or control of its affairs

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**95 Meaning of “the PVG Act”**

In this Act, “the PVG Act” means the Protection of Vulnerable Groups (Scotland) Act 2007.

**96 Crown application**

- (1) Nothing in or under this Act makes the Crown criminally liable.
- (2) The Court of Session may, on an application by the Scottish Ministers, declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (1).
- (3) Subsection (1) does not affect the criminal liability of persons in the service of the Crown.

**97 Commencement**

- (1) This Part, other than section 93, comes into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
  - (a) include transitional, transitory or saving provision,
  - (b) make different provision for different purposes.

**98 Short title**

The short title of this Act is the Disclosure (Scotland) Act 2020.

**Status:**

This version of this Act contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Disclosure (Scotland) Act 2020.