

DISCLOSURE (SCOTLAND) ACT 2020

EXPLANATORY NOTES

PROVISION BY PROVISION COMMENTARY

Part 1: Disclosure of criminal history and other information

Level 2 disclosures

Section 12: Level 2 disclosure applications: countersigning and purposes

29. Section 12 requires a Level 2 disclosure application to be countersigned by an accredited body, and to include a statement from that body about the purpose for which the disclosure is needed. The purpose must be one in relation to which the usual rules in sections 4(2)(a) or (b) of the 1974 Act¹, about not having to self-disclose spent convictions when asked about criminal history, have been excluded by an order made by the Scottish Ministers.²
30. By way of example, if an application for a Level 2 disclosure stated that it was for the purpose of a question asked in order to assess the suitability of the applicant to act as a child minder then this would be a valid purpose as it is one for which the application of section 4(2)(a) and (b) of the 1974 Act is excluded. It is then in relation to that purpose that, for instance, the relevance of any “other relevant information” (see sections 14 and 15) would be assessed for inclusion in a Level 2 disclosure.
31. This ensures that Level 2 disclosures (which can include details of spent convictions) may only be requested in circumstances where a person would be required to self-disclose information about certain spent convictions. References to the purpose of a Level 2 disclosure are to be understood in this way throughout Part 1 of the Act.

¹ The central policy behind the 1974 Act is that people should be able to move on from their previous offending behaviour after sufficient time has elapsed and where their behaviour was not of a severity that it must be disclosed forever. It is recognised, however, that the protection provided by the 1974 Act could not and should not apply in all circumstances. To deal with this, the Scottish Ministers have a power to make certain exclusions and exceptions to that general protection.

² The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 made under section 4(4) of the 1974 Act sets out the circumstances in which an individual cannot deny the existence of a spent conviction. Article 3 of the order excludes the application of section 4(1) in relation to proceedings specified in schedule 1 of the Order and in respect of any proceedings relating to a decision mentioned in Part 1 of schedule 2. Article 4 excludes the application of section 4(2) in relation to the questions listed in schedule 3. These are questions asked to assess the suitability of an individual for a variety of occupations, positions, licences and registrations. In this respect, the reference to a “question” is to be read in the context of section 4(2)(a) and (b) of the 1974 Act and means a question about a person’s previous convictions, offences, conduct or information. Finally, article 5 excepts from section 4(3) a number of professions, offices, employments, occupations and decisions listed in schedule 4 and Part 1 of schedule 2.