

# DISCLOSURE (SCOTLAND) ACT 2020

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## EXPLANATORY NOTES

### PROVISION BY PROVISION COMMENTARY

#### **Part 1: Disclosure of criminal history and other information**

##### **Level 2 disclosures: review applications**

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

66. Section 32 lifts the protections against the normal duty to self-disclose information about spent convictions afforded by section 4 of the 1974 Act, so that someone who has applied for a review under section 22 of the inclusion of a spent childhood conviction or children's hearing outcome, or a review of the inclusion of removable convictions by the Scottish Ministers under section 25 or the independent reviewer under section 26, has to answer questions and provide honest and accurate information about that conviction or outcome for the purposes of the review.
67. Subsections (1) and (2) provide that the usual protections against self-disclosure of spent convictions will not apply where a review is to be carried out by the Scottish Ministers or the independent reviewer about the inclusion of a removable conviction, or the independent reviewer in connection with determining whether information about a spent childhood conviction (or children's hearing outcome) should be included in a Level 2 disclosure. Subsections (2)(a) and (b) provide that the protections do not apply for the purpose of the review (and any appeal under section 30) and in relation to the information which is the subject of the referral. The effect of this is that the protection is lifted insofar as relating to the spent childhood conviction, children's hearing outcome or removable conviction which is the subject of the review. However, the disapplication of the usual protections against self-disclosure of spent convictions would not extend to questions about other spent childhood convictions, children's hearing outcomes or removable convictions which are not the subject of the review.
68. Subsections (3) and (4) disapply the protections in the 1974 Act when information about or details of spent childhood convictions, children's hearing outcomes or removable convictions are thereafter included on a Level 2 disclosure. The effect of this is that it will allow an employer to ask a person about their spent childhood conviction, children's hearing outcome or removable conviction. The protections are, however, only disapplied insofar as discussions / proceedings relate to the specific purpose for which the Level 2 disclosure was issued (e.g. discussions with the employer following receipt of the disclosure).
69. Subsections (5) and (6) make it clear that the protections given by the 1974 Act are not lifted in respect of a failure to acknowledge a spent childhood conviction, children's hearing outcome or removable conviction or any circumstances ancillary to it before it is disclosed. This means that the individual can still benefit from the protections under the 1974 Act up to the point where the information about or details of a spent childhood conviction, children's hearing outcome or removable conviction is included

*These notes relate to the Disclosure (Scotland) Act 2020  
(asp 13) which received Royal Assent on 14 July 2020*

in a disclosure certificate, so that the individual is not in any doubt about whether or not there is a duty to self-disclose.