

# **DISCLOSURE (SCOTLAND) ACT 2020**

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## **EXPLANATORY NOTES**

### **PROVISION BY PROVISION COMMENTARY**

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

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

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

76. Ministers must determine the form and manner in which Level 1 and Level 2 disclosures are to be provided. The disclosure can be provided by electronic communications, but there must be scope for them to be made available in a written or a printed document where the applicant so requests. Ministers can make different determinations as to the form and manner of disclosures for different disclosures or different purposes, and they must publish the determinations as they see fit. Level 1 and Level 2 disclosures have to specify the date on which they were provided to the applicant.

###### ***Section 35: Reclassification of applications***

77. Ministers can treat an application received for any type of disclosure as an application for any other disclosure where it appears to them that another type of disclosure would be more appropriate in the circumstances. There are provisions allowing them to adjust the level of fees accordingly.

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

78. Ministers have the power to make regulations subject to the negative procedure with regard to: the making of Level 1 or Level 2 disclosure applications; the provision of disclosures to applicants; and the provision of disclosures to persons who are not applicants.

###### ***Section 37: Regulations about review procedure***

79. Ministers have the power to make regulations subject to the negative procedure in connection with the procedure for any of the possible reviews under Part 1 of the Act. The regulations can cover any aspect of the procedure relating to a review, including specifying time periods for issuing notices, making representations, and providing statements of reasons.

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

80. Ministers can make regulations by the affirmative procedure to modify the provisions which define the content of Level 1 and Level 2 disclosures, including to enable information held outside the United Kingdom to be included on a Level 1 or Level 2 disclosure provided under the Act.

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

81. Ministers can make regulations by the affirmative procedure to modify any other disclosure enactment (except the Act, when enacted) to ensure that childhood convictions, children’s hearing outcomes or other criminal disposals incurred in childhood are not required or allowed to be disclosed by another person unless that information has been disclosed on a Level 1 or Level 2 disclosure provided under the Act. This is to ensure that the rules in the Act which reduce the disclosure of childhood information are not undermined by any other disclosure enactment that provides for the release of such information.

***Section 40: Presumption as to age in relation to convictions***

82. This section allows Ministers to make a presumption about a person’s age when the person committed an offence. It may not always be clear to Disclosure Scotland from conviction information how old the convicted person was at the time of the offence. This is important for determining whether an applicant’s conviction is a “childhood conviction” because it is the age of the applicant at the date of the offence rather than the date of conviction that is relevant for that purpose. Ministers can presume that the applicant’s age as at the date the offence occurred was the same as at the date of conviction. Evidence to rebut the presumption can be provided and would lead to a review on accuracy grounds under either section 6 (for a Level 1 disclosure) or section 21 (for a Level 2 disclosure).