

DISCLOSURE (SCOTLAND) ACT 2020

EXPLANATORY NOTES

PROVISION BY PROVISION COMMENTARY

Part 1: Disclosure of criminal history and other information

Accredited bodies

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

106. This section places certain duties on Ministers to accept the nomination of an individual as the lead signatory or a countersignatory of an accredited body. Ministers must accept the nomination of someone over the age of 18 who is employed or appointed directly by the accredited body, or employed by someone acting on the accredited body's behalf (see subsection (1)).
107. But under subsection (2), where the accredited body's registration relates to countersigning Level 2 disclosure applications (either alone or in conjunction with the making of Level 1 disclosures) Ministers may refuse to accept the nomination of an individual as a lead signatory or countersignatory if, in their opinion, the individual is not a suitable person to have access to information contained in a Level 2 disclosure (see definition of "disclosure information" in section 69).
108. Subsection (3) allows Ministers to remove all of the prescribed details of a lead signatory or countersignatory if that individual is not a suitable person to have access to information contained in a Level 2 disclosure, or if they have failed to comply with the code of practice published under section 55. In determining whether an individual is a suitable person to have access to disclosure information, Ministers may have regard to any of the information mentioned in section 49(1) and any representations made by the individual who is (or is nominated as) the lead signatory or a countersignatory of the accredited body concerned.
109. Subsection (5) requires Ministers to notify the individual whose nomination as lead signatory or countersignatory of an accredited body they are considering whether to refuse that they are so considering and of the reasons for doing so, and give the individual an opportunity to make representations. Subsection (6) replicates the procedure for those individuals already in the register who may become unsuitable at a later point in time of their registration for reasons under subsection (3)(a) or (b).
110. Subsection (7) provides that, in relation to an applicant seeking, or an accredited body with, mixed registration to make applications for Level 1 disclosures and countersign applications for Level 2 disclosures, the refusal of the nomination of an individual as lead signatory or the removal of a lead signatory from the register on the grounds that the individual is not a suitable person to have access to Level 2 disclosure information does not affect the individual's ability to act in relation to Level 1 disclosures.