



Disclosure (Scotland) Act 2020

2020 asp 13

PART 1

DISCLOSURE OF CRIMINAL HISTORY AND OTHER INFORMATION

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—

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- (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—
 - (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,

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- (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.
- (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—

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- (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,
 - (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

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- (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—
 - (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).

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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.
- (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).

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- (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,
 - (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.

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- (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.
- (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).

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- (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.
- (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.

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- (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,
 - (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.

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- (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.
- (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).

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- (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).

Status:

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Changes to legislation:

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