



Disclosure (Scotland) Act 2020

2020 asp 13

PART 1

DISCLOSURE OF CRIMINAL HISTORY AND OTHER INFORMATION

PROSPECTIVE

Common provisions relating to Level 1 and Level 2 disclosures

34 Form and manner of provision of disclosures

- (1) The Scottish Ministers must determine the form and manner in which a Level 1 disclosure or a Level 2 disclosure is to be provided or made available.
- (2) They may in particular determine that a Level 1 disclosure or a Level 2 disclosure is to be provided by using electronic communications.
- (3) A determination under subsection (1) must allow a Level 1 disclosure or a Level 2 disclosure to be provided in the form of a printed or written document if the applicant so requests.
- (4) The Scottish Ministers may make different determinations under this section for different disclosures or other different purposes.
- (5) The Scottish Ministers must arrange for their determinations under this section to be published in such manner as they see fit.
- (6) A Level 1 disclosure or a Level 2 disclosure must specify the date on which the disclosure was provided to the applicant.

35 Reclassification of applications

- (1) Where the Scottish Ministers receive an application under this Part for one type of disclosure, they may treat it as an application for another type of disclosure if it appears to them from the information contained in the application that the other type of disclosure is more appropriate in the circumstances.

Status: This version of this cross heading contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Disclosure (Scotland) Act 2020, Cross Heading: Common provisions relating to Level 1 and Level 2 disclosures. (See end of Document for details)

- (2) For the purposes of this section, the types of disclosure are—
- (a) a Level 1 disclosure,
 - (b) a Level 2 disclosure where neither section 16 nor section 17 applies,
 - (c) a Level 2 disclosure where section 16 applies,
 - (d) a Level 2 disclosure where section 17 applies.
- (3) Where the fee for the other type of disclosure is lower than the fee for the type of disclosure originally applied for, the Scottish Ministers must refund the difference in the fees to the applicant.
- (4) Where the fee for the other type of disclosure is higher than the fee for the type of disclosure originally applied for, the Scottish Ministers need not consider the application any further unless and until the difference in the fees is paid by the applicant.
- (5) In subsections (3) and (4), references to a fee are to a fee provided for under section 61.

36 Regulations about procedure for disclosure requests

The Scottish Ministers may by regulations make further provision about the procedure to be followed in connection with—

- (a) applications under this Part for Level 1 disclosures or Level 2 disclosures,
- (b) the provision of such disclosures to applicants under this Part,
- (c) making such disclosures available to persons other than the applicants.

37 Regulations about review procedure

- (1) The Scottish Ministers may by regulations make provision in connection with the procedure for the carrying out of any review (whether by the Scottish Ministers, the chief constable or the independent reviewer) under this Part in relation to any of the information included in a Level 1 disclosure or a Level 2 disclosure.
- (2) Regulations under this section may in particular include provision about—
- (a) the time period within which any statement of reasons is to be provided for the purposes of the review,
 - (b) the time period within which the applicant may make representations for the purposes of the review,
 - (c) the time period within which a person required to provide information for the purposes of the review is to do so,
 - (d) the time period within which any notice or notification required in connection with the review is to be given.

38 Power to modify definitions of Level 1 disclosure and Level 2 disclosure

- (1) The Scottish Ministers may by regulations modify—
- (a) section 1 (which defines “Level 1 disclosure”),
 - (b) section 8 (which defines “Level 2 disclosure”),
- including the definitions of expressions used in those sections.
- (2) Regulations under subsection (1) may in particular make modifications for the purposes of, or in connection with, enabling Level 1 disclosures or Level 2 disclosures

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provided under this Part to include details of information held outside the United Kingdom.

39 Childhood information: power to modify other enactments

- (1) The Scottish Ministers may by regulations modify any disclosure enactment for the purpose of ensuring that relevant childhood information of an individual is not required or allowed to be disclosed to another person unless the information has been disclosed to another person in a Level 1 disclosure or a Level 2 disclosure under this Act.
- (2) In subsection (1), “disclosure enactment” means any enactment other than this Act so far as—
 - (a) requiring or allowing the disclosure of relevant childhood information of individuals to other persons for any purpose, or
 - (b) otherwise regulating the disclosure of such information.
- (3) For the purposes of this section, “relevant childhood information” is, in relation to an individual—
 - (a) information about a children's hearing outcome of the individual, and
 - (b) information about—
 - (i) a conviction,
 - (ii) a caution,
 - (iii) an alternative to prosecution (within the meaning of the Rehabilitation of Offenders Act 1974),for an offence committed when the individual was under 18 years of age.

40 Presumption as to age in relation to convictions

For the purposes of the exercise of their functions under this Part, the Scottish Ministers may, in the absence of information to the contrary, presume that a person convicted of an offence was of the same age at the time when the offence was committed as the person was at the date of the conviction.

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