



Disclosure (Scotland) Act 2020

2020 asp 13

PART 1

DISCLOSURE OF CRIMINAL HISTORY AND OTHER INFORMATION

PROSPECTIVE

General

60 Form and manner of applications and notices

- (1) The Scottish Ministers must determine the form and manner in which—
 - (a) any application under this Part is to be made,
 - (b) any notice or notification under this Part is to be given.
- (2) A determination under subsection (1) may in particular make provision for—
 - (a) an application to be made (and signed or countersigned), or
 - (b) a notice or notification to be given,by using electronic communications.
- (3) A determination under subsection (1) must allow an application to be made in the form of a printed or written document if the applicant so chooses.
- (4) Subsection (3) does not apply to a determination relating to an application for a Level 1 disclosure made under section 2 by an accredited body on behalf of an individual.
- (5) A determination under subsection (1) relating to an application for a Level 1 disclosure made under section 2 by an accredited body on behalf of an individual may include provision about the form and manner in which the individual's consent to the application is to be given and evidenced for the purposes of subsection (2) of that section.
- (6) The Scottish Ministers may make different determinations under this section for—
 - (a) different applications, notices or notifications, or
 - (b) other different purposes.

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- (7) The Scottish Ministers must arrange for their determinations under this section to be published in such manner as they see fit.
- (8) The Scottish Ministers need not consider any application under this Part that is not made in the form and manner determined by them under this section.
- (9) In this section, “application” includes request and any statement or other document that is to accompany an application.

61 Fees

- (1) The Scottish Ministers may by regulations make provision for the charging of fees in respect of the exercise of their functions under this Part.
- (2) Regulations under this section may in particular provide for the charging of fees for or in connection with—
 - (a) an application for a Level 1 disclosure,
 - (b) an application for a Level 2 disclosure,
 - (c) an application for registration in the register of accredited bodies and registration in the register,
 - (d) an application nominating the lead signatory or a countersignatory of an accredited body,
 - (e) the notification of any changes relating to the prescribed details of an accredited body's lead signatory or countersignatory,
 - (f) the provision of any documentation confirming the authenticity of a certificate provided in response to an application for a Level 1 disclosure,
 - (g) a Level 1 review application,
 - (h) a Level 2 review application,
 - (i) verifying the identity of an applicant of a disclosure request.
- (3) Regulations may in particular provide for—
 - (a) different fees in different circumstances,
 - (b) reduction, waiver or refund of fees,
 - (c) the manner in which fees are to be paid.
- (4) The provision which may be made by virtue of subsection (2)(c) includes in particular provision for—
 - (a) annual or other recurring fees in respect of—
 - (i) registration in the register of accredited bodies,
 - (ii) the nomination of the lead signatory or a countersignatory of an accredited body,
 - (b) such annual or other recurring fees to be paid in advance or in arrears.
- (5) Where regulations provide for a fee to be charged in respect of any application, the Scottish Ministers need not consider the application unless the fee is paid in the manner provided for in the regulations.

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62 Fees for provision of information by the chief constable

The Scottish Ministers must pay to the Scottish Police Authority such fee as they think appropriate for the provision of information to them by the chief constable in pursuance of any provision of this Part.

63 Guidance for chief constable

- (1) The Scottish Ministers must issue guidance to the chief constable about the exercise of the chief constable's functions under this Part.
- (2) The Scottish Ministers may from time to time issue revised guidance, and references in this section to guidance include revised guidance.
- (3) The guidance may in particular include provision about the conduct of reviews under section 23.
- (4) Before issuing guidance under this section, the Scottish Ministers must consult the chief constable.
- (5) The chief constable must have regard to guidance issued under this section in exercising functions under this Part.

64 Sharing of information with the chief constable

- (1) The Scottish Ministers may make available to the chief constable any information mentioned in subsection (2) that they hold in connection with the performance of their functions under this Part.
- (2) The information is—
 - (a) the name, address and date of birth of any individual,
 - (b) any other information that would enable or assist constables of the Police Service of Scotland to satisfy themselves as to the identity of an individual.
- (3) Information disclosed under subsection (1) may be used by constables of the Police Service of Scotland only for—
 - (a) the performance of the chief constable's functions under this Part, or
 - (b) the law enforcement purposes within the meaning of section 31 of the Data Protection Act 2018.

65 Sources of information

- (1) Any person who holds central records must make those records available to the Scottish Ministers for the purposes of enabling or assisting them to perform their functions under this Part.
- (2) The Scottish Ministers may by notice require any person mentioned in subsection (3) to provide them with information which they—
 - (a) believe the person holds, and
 - (b) consider is necessary to carry out their functions under this Part.
- (3) The persons are—
 - (a) an individual applying for a Level 1 or a Level 2 disclosure,
 - (b) the chief constable,

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- (c) the Principal Reporter,
 - (d) the Scottish Courts and Tribunals Service,
 - (e) a local authority,
 - (f) any other person the Scottish Ministers consider appropriate.
- (4) The chief constable must not provide information by virtue of a notice 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) No proceedings are competent against the Scottish Ministers by reason of an inaccuracy in the information made available or provided to them in accordance with or in pursuance of any power or duty under this Part to provide information to the Scottish Ministers in relation to their functions under this Part.

66 Delegation of functions of Scottish Ministers

- (1) The Scottish Ministers may, to such extent and subject to such conditions as they think appropriate, delegate any of their functions under this Part (other than excepted functions) to such person as they may determine.
- (2) An excepted function is a function—
- (a) relating to the making of regulations,
 - (b) relating to the publishing or revising of a code of practice under section 55,
 - (c) relating to the laying of such a code of practice before the Scottish Parliament,
 - (d) relating to the making of a determination under section 34(1) or 60(1),
 - (e) relating to the determination of a fee under section 62,
 - (f) relating to the issuing and revising of guidance under section 63.
- (3) A delegation under subsection (1) may be varied or revoked at any time.
- (4) No proceedings are competent against a person exercising functions delegated under this section by reason of an inaccuracy in the information made available or provided to the person in accordance with or in pursuance of any power or duty under this Part to provide information to the Scottish Ministers in relation to their functions under this Part.

67 Saving: disclosure of information and records

Nothing in this Part limits any power that exists otherwise than under this Act to disclose information or to make records available.

68 Definition of consideration of suitability

In sections 17(1)(b) and 44(2), the references to a person (“A”) considering an individual’s suitability to carry out, or to be offered or supplied for, a type of regulated role are references to A considering the individual’s suitability—

- (a) to carry out that type of regulated role for A,
- (b) to be supplied by A to carry out that type of regulated role for another person,
- (c) for any other prescribed purpose.

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69 Interpretation of Part 1

In this Part—

- “accredited body” has the meaning given in section 46(2),
- “acting in relation to a disclosure request” is to be construed in accordance with section 47(11),
- the “adults' list” means the list referred to in section 1(1)(b) of the PVG Act,
- “barred from regulated roles with adults” is to be construed in accordance with section 92(2) of the PVG Act,
- “barred from regulated roles with children” is to be construed in accordance with section 92(1) of the PVG Act,
- “caution” means a caution given to a person in England and Wales or Northern Ireland in respect of an offence which, at the time when the caution is given, the person has admitted,
- “central records” means such records of convictions, cautions or other information held for the use of police forces generally as may be prescribed,
- “certificate” means any one or more documents provided in response to a particular application,
- “chief constable” means the chief constable of the Police Service of Scotland,
- “childhood caution”, in relation to an individual, means a caution given in respect of an offence committed when the individual was under 18 years of age,
- “childhood conviction”, in relation to an individual, means a conviction for an offence committed when the individual was under 18 years of age,
- “children” is to be construed in accordance with the definition of “child” in section 97(1) of the PVG Act,
- “children's hearing outcome” means anything treated as a conviction for the purposes of the Rehabilitation of Offenders Act 1974 by virtue of section 3 of that Act (special provision with respect to certain disposals by children's hearings),
- the “children's list” means the list referred to in section 1(1)(a) of the PVG Act,
- “conviction” means a conviction within the meaning of the Rehabilitation of Offenders Act 1974, but does not include a children's hearing outcome,
- “countersignatory” has the meaning given in section 51(8),
- “disclosure information” has the meaning given in section 47(10),
- “electronic communications” is to be construed in accordance with section 15(1) of the Electronic Communications Act 2000,
- “independent reviewer” means the independent reviewer established by section 11 of the Age of Criminal Responsibility (Scotland) Act 2019,
- “lead signatory” has the meaning given in section 51(8),
- “Level 1 disclosure” has the meaning given in section 1,
- “Level 1 review application” means an application under section 5(1),
- “Level 2 disclosure” has the meaning given in section 8,
- “Level 2 review application” means an application under section 20(1),
- “List A offence” means an offence listed in schedule 1,
- “List B offence” means an offence listed in schedule 2,
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975,
- “non-disclosable children's hearing outcome” has the meaning given in section 10,

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“non-disclosable conviction” has the meaning given in section 9,

“police force” means—

- (a) the Police Service of Scotland,
- (b) a police force in England or Wales maintained under the Police Act 1996,
- (c) the Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve,

“prescribed” means prescribed by regulations made by the Scottish Ministers,

“purpose of the disclosure”, in relation to a Level 2 disclosure, is to be construed in accordance with sections 12(3) and 19(6),

“the PVG Scheme” means the scheme provided for by Part 2 of the PVG Act,

“register of accredited bodies” has the meaning given in section 46(1),

“registration” has the meaning given in section 46(2),

“regulated roles with children” has the meaning given in section 91 of the PVG Act,

“regulated roles with adults” has the meaning given in section 91 of the PVG Act,

“removable conviction” has the meaning given in section 20(6),

“reviewable information” has the meaning given in section 20(2),

“scheme record” has the meaning given in section 48 of the PVG Act,

“spent”, in relation to a conviction (including a childhood conviction) or caution, means spent for the purpose of the Rehabilitation of Offenders Act 1974; and

“unspent”, in relation to a conviction (including a childhood conviction) or caution, is to be construed accordingly,

“statutory office-holder” means a person appointed to an office by virtue of an enactment,

“type of regulated role” is to be construed in accordance with section 91(4) and (5) of the PVG Act.

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