



Disclosure (Scotland) Act 2020

2020 asp 13

PART 1

DISCLOSURE OF CRIMINAL HISTORY AND OTHER INFORMATION

PROSPECTIVE

Level 2 disclosures: review applications

20 Level 2 disclosure: application for review

- (1) Where a Level 2 disclosure is provided to an applicant, the applicant may, within the prescribed period, apply to the Scottish Ministers for—
 - (a) a review of the accuracy of any of the information contained in the disclosure,
 - (b) if the disclosure includes reviewable information, a review of the inclusion of any of the reviewable information.
- (2) The following information is “reviewable information” for the purposes of this Part—
 - (a) information included under section 13 about a spent childhood conviction or children's hearing outcome of the applicant,
 - (b) information relating to the applicant provided by the chief constable in accordance with section 14,
 - (c) details of a removable conviction of the applicant.
- (3) An application may be made under subsection (1) only if the applicant notified the Scottish Ministers under section 18(1)(b) of an intention to make the application.
- (4) Where an application under subsection (1) seeks a review of the inclusion of any reviewable information, the applicant must specify in the application the reviewable information that the applicant wishes to be subject to the review.
- (5) An application under subsection (1) is referred to in this Part as a “Level 2 review application”.
- (6) In this Part, a “removable conviction” is a conviction (other than a childhood conviction) that is—

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- (a) a spent conviction for a List A offence and at least 11 years have passed since the date of conviction,
- (b) a spent conviction for a List B offence that is not a non-disclosable conviction.

21 Review of accuracy of information by the Scottish Ministers

- (1) This section applies where—
 - (a) a Level 2 review application is made in relation to a Level 2 disclosure provided to an applicant, and
 - (b) the Level 2 review application seeks a review of the accuracy of any of the information contained in the Level 2 disclosure.
- (2) The Scottish Ministers must carry out a review of the accuracy of the information contained in the Level 2 disclosure.
- (3) In the review the Scottish Ministers must decide whether the information is accurate.
- (4) The Scottish Ministers must notify the applicant of their decision.
- (5) A review under subsection (2) in respect of any information contained in a Level 2 disclosure may not, in relation to that information, consider any question that could be the subject of a review under—
 - (a) section 22, 23 or 25, or
 - (b) section 18 of the Age of Criminal Responsibility (Scotland) Act 2019.

22 Review of childhood information by the independent reviewer

- (1) This section applies where—
 - (a) a Level 2 review application is made in relation to a Level 2 disclosure provided to an applicant, and
 - (b) the Level 2 review application specifies information included in the disclosure under section 13 about a spent childhood conviction or children's hearing outcome of the applicant as information that the applicant wishes to be subject to the review.
- (2) The Scottish Ministers must arrange for the independent reviewer to carry out a review of the information.
- (3) In the review the independent reviewer must decide—
 - (a) whether the childhood conviction or children's hearing outcome is relevant for the purpose of the disclosure, and
 - (b) whether information about the conviction or outcome ought to be included in the disclosure.
- (4) No finding of fact on which a childhood conviction or children's hearing outcome is based may be challenged in a review under this section.

23 Review of relevant Scottish police information by the police

- (1) This section applies where—
 - (a) a Level 2 review application is made in relation to a Level 2 disclosure provided to an applicant, and

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- (b) the Level 2 review application specifies information relating to the applicant provided by the chief constable in accordance with section 14 as information that the applicant wishes to be subject to the review.
- (2) A review under this section may not consider any information contained in a Level 2 disclosure which was or could have been the subject of a review under section 18 of the Age of Criminal Responsibility (Scotland) Act 2019.
- (3) The Scottish Ministers must arrange for the chief constable to carry out a review of the information.
- (4) In the review the chief constable must decide—
 - (a) whether the chief constable still reasonably believes the information to be relevant for the purpose of the disclosure, and
 - (b) whether the chief constable is still of the opinion that the information ought to be included in the disclosure.
- (5) In carrying out a review under this section, the chief constable must—
 - (a) by notice give the applicant an opportunity to make representations, and
 - (b) have regard to any representations made by the applicant.
- (6) A notice under subsection (5)(a) must specify the time period within which the applicant may make representations.
- (7) The chief constable must notify the Scottish Ministers of—
 - (a) the chief constable's decision under subsection (4), and
 - (b) the chief constable's reasons for the decision.
- (8) The Scottish Ministers must notify the applicant of—
 - (a) the chief constable's decision,
 - (b) the chief constable's reasons for the decision, and
 - (c) if the chief constable notifies the Scottish Ministers that the chief constable—
 - (i) still reasonably believes the information to be relevant for the purpose of the disclosure, and
 - (ii) is still of the opinion that the information ought to be included in the disclosure,

the right to request a review by the independent reviewer under section 24 in relation to the information.

24 Review of relevant Scottish police information by the independent reviewer

- (1) This section applies where—
 - (a) a Level 2 review application is made in relation to a Level 2 disclosure provided to an applicant,
 - (b) the Level 2 review application specifies information relating to the applicant provided by the chief constable in accordance with section 14 as information that the applicant wishes to be subject to the review, and
 - (c) following a review under section 23 in relation to the information, the Scottish Ministers have notified the applicant that the chief constable—
 - (i) still reasonably believes the information to be relevant for the purpose of the disclosure, and

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(ii) is still of the opinion that the information ought to be included in the disclosure.

- (2) The applicant may, within the prescribed period, request that the Scottish Ministers arrange for the independent reviewer to carry out a review of the information.
- (3) On receipt of a request under subsection (2), the Scottish Ministers must arrange for the independent reviewer to carry out a review of the information.
- (4) In the review the independent reviewer must decide—
 - (a) whether the information is relevant for the purpose of the disclosure, and
 - (b) whether the information ought to be included in the disclosure.

25 Review of inclusion of removable convictions by the Scottish Ministers

- (1) This section applies where—
 - (a) a Level 2 review application is made in relation to a Level 2 disclosure provided to an applicant, and
 - (b) the Level 2 review application specifies details of a removable conviction included in the disclosure as information that the applicant wishes to be subject to the review.
- (2) The Scottish Ministers must carry out a review of the inclusion of the removable conviction.
- (3) In the review the Scottish Ministers must decide—
 - (a) whether the removable conviction is relevant for the purpose of the disclosure, and
 - (b) whether details of the removable conviction ought to be included in the disclosure.
- (4) In carrying out a review under this section, the Scottish Ministers must by notice give the applicant an opportunity to make representations.
- (5) A notice under subsection (4) must specify the period within which the applicant may make representations.
- (6) In reaching a decision in the review, the Scottish Ministers must take account of—
 - (a) any representations received by virtue of subsection (4), and
 - (b) where they, by notice under section 65(2), require any person to provide them with information for the purpose of carrying out the review, any information received by virtue of the notice.
- (7) No finding of fact on which a conviction is based may be challenged in a review under this section.
- (8) The Scottish Ministers must notify the applicant of—
 - (a) their decision under subsection (3), and
 - (b) if they decide that the removable conviction is relevant for the purpose of the disclosure and that details of it ought to be included in the disclosure—
 - (i) the reasons for their decision, and
 - (ii) the right to request a review by the independent reviewer under section 26 in relation to the conviction.

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26 Review of inclusion of removable convictions by the independent reviewer

- (1) This section applies where—
 - (a) a Level 2 review application is made in relation to a Level 2 disclosure provided to an applicant,
 - (b) the Level 2 review application specifies details of a removable conviction included in the disclosure as information that the applicant wishes to be subject to the review, and
 - (c) following a review under section 25 in relation to the removable conviction, the Scottish Ministers have notified the applicant that they have decided that—
 - (i) the removable conviction is relevant for the purpose of the disclosure, and
 - (ii) details of it ought to be included in the disclosure.
- (2) The applicant may, within the prescribed period, request that the Scottish Ministers arrange for the independent reviewer to carry out a review of the inclusion of the removable conviction.
- (3) On receipt of a request under subsection (2), the Scottish Ministers must arrange for the independent reviewer to carry out a review of the inclusion of the removable conviction.
- (4) In the review the independent reviewer must decide—
 - (a) whether the removable conviction is relevant for the purpose of the disclosure, and
 - (b) whether details of the removable conviction ought to be included in the disclosure.
- (5) No finding of fact on which a conviction is based may be challenged in a review under this section.

27 Combination of reviews by the independent reviewer

- (1) Subsection (2) applies where, in respect of the same Level 2 review application, a review is to be carried out by the independent reviewer under more than one of—
 - (a) section 22,
 - (b) section 24,
 - (c) section 26.
- (2) The Scottish Ministers must arrange for the reviews to be carried out by the independent reviewer together as a single review.
- (3) Subsection (4) applies where, in respect of the same Level 2 review application—
 - (a) a review is to be carried out by the independent reviewer under section 22, and
 - (b) a review (the “earlier review”) is to be carried out under (either or both)—
 - (i) section 23,
 - (ii) section 25.
- (4) The Scottish Ministers must ensure that the review to be carried out by the independent reviewer is not started until—
 - (a) the outcome of the earlier review or reviews has been notified to the applicant, and
 - (b) the relevant period has expired.

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- (5) The relevant period is the period mentioned in whichever of the following applies—
 - (a) section 24(2),
 - (b) section 26(2).
- (6) Where both of those sections apply and the periods mentioned in them do not expire at the same time, the relevant period is taken to expire when the later period expires.

28 Independent reviewer: information and representations

- (1) In carrying out a review under this Part in respect of a Level 2 review application, the independent reviewer—
 - (a) must by notice give the applicant an opportunity to make representations, and
 - (b) may by notice require any person mentioned in subsection (2) to provide the reviewer with information which the reviewer—
 - (i) believes the person holds, and
 - (ii) considers is necessary to carry out the review.
- (2) The persons are—
 - (a) the applicant,
 - (b) the Scottish Ministers,
 - (c) the chief constable,
 - (d) the Scottish Courts and Tribunals Service,
 - (e) any other person the independent reviewer considers appropriate.
- (3) Where the review includes a review under section 22 of information about a spent childhood conviction or children's hearing outcome of the applicant, the Scottish Ministers must provide to the independent reviewer a statement of their reasons for their determination—
 - (a) that the childhood conviction or children's hearing outcome is relevant for the purpose of the disclosure, and
 - (b) that information about the conviction or outcome of the applicant ought to be included in the disclosure.
- (4) Where the review includes a review under section 24 of information relating to the applicant provided by the chief constable in accordance with section 14, the Scottish Ministers must provide to the independent reviewer the statement of the chief constable's reasons for the chief constable's decision following the review under section 23.
- (5) Where the review includes a review under section 26 of the inclusion of a removable conviction of the applicant, the Scottish Ministers must provide to the independent reviewer a statement of their reasons for their decision following the review under section 25.
- (6) A notice under subsection (1)(a) must specify the period within which the applicant may make representations.
- (7) A notice under subsection (1)(b) must specify the information sought and the period within which it must be provided.

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- (8) The chief constable must not provide information by virtue of a notice under subsection (1)(b) if the chief constable thinks that disclosing the information would be contrary to the interests of the prevention or detection of crime.
- (9) In carrying out the review, the independent reviewer must take account of any statement of reasons, representations or information received by virtue of subsection (1), (3), (4) or (5).

29 Notification of independent reviewer's decision

- (1) On concluding a review under this Part in respect of a Level 2 review application, the independent reviewer must notify the persons mentioned in subsection (2) of—
 - (a) the independent reviewer's decision, and
 - (b) the independent reviewer's reasons for it.
- (2) The persons are—
 - (a) the applicant,
 - (b) the Scottish Ministers, and
 - (c) where the review included a review under section 24 of information relating to the applicant provided by the chief constable in accordance with section 14, the chief constable.
- (3) In subsection (1)(a), the “independent reviewer's decision” includes—
 - (a) where the review included a review under section 22, the independent reviewer's decision under subsection (3) of that section,
 - (b) where the review included a review under section 24, the independent reviewer's decision under subsection (4) of that section,
 - (c) where the review included a review under section 26, the independent reviewer's decision under subsection (4) of that section.

30 Appeal against independent reviewer's decision

- (1) An appeal may be taken against the independent reviewer's decision in a review carried out by the independent reviewer under this Part in respect of a Level 2 review application.
- (2) The appeal may be taken by—
 - (a) the applicant, or
 - (b) where the review included a review under section 24 of information relating to the applicant provided by the chief constable in accordance with section 14, the chief constable.
- (3) The appeal is to be—
 - (a) to a sheriff, and
 - (b) on a point of law only.
- (4) The appeal may be taken before the end of the period of 3 months beginning with the day on which the independent reviewer's decision was notified to the applicant under section 29.
- (5) If, before the end of that period—

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- (a) the applicant notifies the Scottish Ministers that the applicant does not intend to take an appeal under this section, the applicant loses the right to take an appeal on the date on which the notification is given,
 - (b) the chief constable notifies the Scottish Ministers that the chief constable does not intend to take an appeal under this section, the chief constable loses the right to take an appeal on the date on which the notification is given.
- (6) In an appeal under this section, the sheriff must—
- (a) confirm the independent reviewer's decision, or
 - (b) quash the decision and substitute for it the sheriff's own decision.
- (7) No finding of fact on which a conviction or children's hearing outcome is based may be challenged in an appeal under this section.
- (8) Proceedings in an appeal under this section may take place in private if the sheriff considers it appropriate in all the circumstances.
- (9) The sheriff may allow the appeal in part where it relates to—
- (a) more than one decision, or
 - (b) information about two or more convictions.
- (10) The decision of the sheriff in an appeal under this section is final.
- (11) References in this section to the independent reviewer's decision are to be construed in accordance with section 29(3) and include any part of the decision.

31 Provision of new Level 2 disclosure on conclusion of review proceedings

- (1) This section applies where—
- (a) a Level 2 review application is made in relation to a Level 2 disclosure provided to an applicant, and
 - (b) proceedings on the application have finally concluded.
- (2) The Scottish Ministers must provide the applicant with a new Level 2 disclosure as if the applicant had made an application for the disclosure under section 11 on the date on which proceedings on the review application finally concluded.
- (3) If the effect of the final outcome of the proceedings is, in relation to any of the information contained in the Level 2 disclosure that was subject to a review as to its accuracy, that the information is inaccurate, the Scottish Ministers must ensure that the new Level 2 disclosure contains corrected information.
- (4) If the effect of the final outcome of the proceedings is, in relation to any of the reviewable information that was the subject of the Level 2 review application, that the information—
- (a) is not relevant for the purpose of the disclosure, and
 - (b) ought not to be included in the disclosure,
- the Scottish Ministers must exclude the information from the new Level 2 disclosure to be provided under subsection (2).
- (5) If the effect of the final outcome of the proceedings is, in relation to any of the reviewable information that was the subject of the Level 2 review application, that the information—
- (a) is relevant for the purposes of the disclosure, and

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- (b) ought to be included in the disclosure,
the applicant may not specify the information in any review application made in relation to the new Level 2 disclosure or any subsequent Level 2 disclosure provided for the same purpose as the original Level 2 disclosure.
- (6) Subsection (5) does not prevent the applicant from specifying the information in any review application made in relation to a subsequent Level 2 disclosure provided for the same purpose as the original Level 2 disclosure if—
- (a) the review application in relation to the subsequent Level 2 disclosure is made after the end of such period beginning with the final outcome of proceedings as the Scottish Ministers may by regulations specify, or
 - (b) the Scottish Ministers are satisfied that the applicant's circumstances have changed in a material respect since the final outcome of proceedings.
- (7) For the purposes of this section, proceedings on a Level 2 review application finally conclude on whichever of the following occurs last—
- (a) if a review of the accuracy of any information contained in the Level 2 disclosure is carried out by the Scottish Ministers, the date of the Scottish Ministers' decision under section 21(3),
 - (b) if no review is carried out by the independent reviewer in relation to any of the reviewable information that is the subject of the Level 2 review application, the expiry of the period within which the applicant could have requested that the Scottish Ministers arrange for the independent reviewer to review the inclusion of the reviewable information (see sections 24(2) and 26(2)),
 - (c) if—
 - (i) a review is carried out by the independent reviewer in relation to any of the reviewable information that is the subject of the Level 2 review application, and
 - (ii) no appeal is taken under section 30 against the independent reviewer's decision,the expiry of the period within which an appeal could have been taken against the independent reviewer's decision (see section 30(4)) or, if sooner, the relevant date,
 - (d) if—
 - (i) a review is carried out by the independent reviewer in relation to any of the reviewable information that is the subject of the Level 2 review application, and
 - (ii) an appeal is taken under section 30 against the independent reviewer's decision,the date of the sheriff's decision in the appeal.
- (8) In subsection (7)(c), the “relevant date” is—
- (a) where—
 - (i) the review carried out by the independent reviewer included a review under section 24 of information relating to the applicant provided by the chief constable in accordance with section 14, and
 - (ii) both the applicant and the chief constable notify the Scottish Ministers under subsection (5) of section 30 that they do not intend to take an appeal under subsection (1) of that section,the date on which the later of those notifications is made,

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- (b) in any other case, the date on which the applicant notifies the Scottish Ministers under subsection (5) of 30 that the applicant does not intend to take an appeal under subsection (1) of that section.
- (9) For the purposes of this section, “the final outcome of the proceedings”, in relation to any of the information that was the subject of the Level 2 review application, means—
 - (a) where subsection (7)(a) applies in relation to the information, the Scottish Ministers' decision,
 - (b) where subsection (7)(b) applies in relation to the proceedings, the decision of the Scottish Ministers or the chief constable as the case may be,
 - (c) where subsection (7)(c) applies in relation to the information, the independent reviewer's decision as notified under section 29,
 - (d) where subsection (7)(d) applies in relation to the information, the sheriff's decision.
- (10) Subsections (11) and (12) apply where—
 - (a) a new Level 2 disclosure is provided to an applicant under subsection (2),
 - (b) information is excluded from the new Level 2 disclosure by virtue of subsection (4),
 - (c) the applicant participates in the PVG Scheme, and
 - (d) the information that is excluded from the new Level 2 disclosure is also contained in the applicant's scheme record in relation to a type of regulated role to which the purpose of the new Level 2 disclosure relates.
- (11) The Scottish Ministers must remove the information from the applicant's scheme record so far as relating to the type of regulated role mentioned in subsection (10)(d).
- (12) The information is to be treated for the purposes of the PVG Act as not being vetting information.

32 Disapplication of provisions of section 4 of the Rehabilitation of Offenders Act 1974

- (1) Subsection (2) applies where—
 - (a) a review is to be carried out by the independent reviewer under section 22 of information included in a Level 2 disclosure about—
 - (i) a spent childhood conviction of an applicant, or
 - (ii) a children's hearing outcome of an applicant, or
 - (b) a review is to be carried out—
 - (i) by the Scottish Ministers under section 25, or
 - (ii) by the independent reviewer under section 26,
 of the inclusion of a removable conviction in a Level 2 disclosure.
- (2) Subsections (1)(a) and (b), (2)(a) and (b) and (3)(a) of section 4 of the Rehabilitation of Offenders Act 1974 (effect of becoming a protected person) (the “1974 Act”) do not apply—
 - (a) for the purpose of the review and, in the case of a review by the independent reviewer, any appeal under section 30 against the independent reviewer's decision in the review,
 - (b) in relation to the conviction or outcome that is the subject of the review.
- (3) Subsection (4) applies where—

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- (a) a review as mentioned in subsection (1) is carried out by the independent reviewer or, as the case may be, the Scottish Ministers,
 - (b) the effect of the final outcome of the proceedings (within the meaning of section 31(9)) on the Level 2 review application giving rise to the review is that—
 - (i) the spent childhood conviction, children's hearing outcome or removable conviction is relevant for the purpose of the Level 2 disclosure, and
 - (ii) information about or, as the case may be, details of the conviction or outcome ought to be included in the disclosure, and
 - (c) information about or, as the case may be, details of the conviction or outcome is or are included in a new Level 2 disclosure provided to the applicant by virtue of section 31(2).
- (4) Subsections (1)(a) and (b), (2)(a) and (b) and (3)(a) and (b) of section 4 of the 1974 Act do not apply—
- (a) in relation to the purpose of the Level 2 disclosure, and
 - (b) in relation to the spent childhood conviction, children's hearing outcome or removable conviction information about or, as the case may be, details of which is or are included in the disclosure.
- (5) Subsection (6) applies where—
- (a) information about—
 - (i) a spent childhood conviction of an applicant,
 - (ii) a children's hearing outcome of an applicant, or
 - (b) details of a removable conviction of an applicant,
- is or are included in a Level 2 disclosure as mentioned in subsection (3)(c).
- (6) Subject to subsections (1) and (2), the application of subsections (1)(a) and (b), (2)(a) and (b) and (3)(a) and (b) of section 4 of the 1974 Act is not excluded in relation to the spent childhood conviction, children's hearing outcome or removable conviction, or any circumstances ancillary to it, during the period before the Level 2 disclosure was provided to the applicant.

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