



Disclosure (Scotland) Act 2020

2020 asp 13

PART 1

DISCLOSURE OF CRIMINAL HISTORY AND OTHER INFORMATION

PROSPECTIVE

Level 2 disclosures

8 Level 2 disclosure

- (1) In this Part, a “Level 2 disclosure”, in relation to an individual, is a certificate—
- (a) containing the prescribed details of every criminal disposal incurred by the individual that is recorded in central records or, if there are no such disposals, stating that fact,
 - (b) containing information about any spent childhood convictions and children's hearing outcomes of the individual that is to be included under section 13 or, if there is no such information, stating that fact,
 - (c) containing any information relating to the individual provided by the chief constable in accordance with section 14 or, if no such information has been provided, stating that fact,
 - (d) containing information relating to the individual provided by the chief officer of a relevant overseas police force that may be included in the disclosure in accordance with section 15 or, if no such information has been provided, stating that fact,
 - (e) if the individual is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003, stating that fact,
 - (f) if section 16 applies, containing any further information under that section relating to the individual, and
 - (g) if section 17 applies, containing any further information under that section relating to the individual.
- (2) But a Level 2 disclosure in relation to an individual must not contain any details or information if—

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- (a) the details or information were excluded from another Level 2 disclosure under section 31(4) following a Level 2 review application in respect of that other Level 2 disclosure, and
 - (b) it appears to the Scottish Ministers that the purpose of the disclosure is the same as the purpose of that other Level 2 disclosure.
- (3) In subsection (1), “criminal disposal”—
- (a) means—
 - (i) a conviction (other than a childhood conviction), whether spent or unspent,
 - (ii) an unspent childhood conviction,
 - (iii) an unspent caution (other than a childhood caution), but
 - (b) does not include a non-disclosable conviction.

9 Non-disclosable convictions

- (1) For the purposes of this Part, a conviction of an individual is a non-disclosable conviction if—
- (a) it is a spent conviction, and
 - (b) either—
 - (i) it is not a conviction for an offence listed in schedule 1 (a “List A offence”) or schedule 2 (a “List B offence”), or
 - (ii) it is a conviction for a List B offence and at least one of the conditions in subsection (2) is satisfied.
- (2) The conditions are—
- (a) the disposal in respect of the conviction was an admonition or an absolute discharge,
 - (b) the conviction is a childhood conviction and at least 5 years and 6 months have passed since the date of the conviction,
 - (c) the conviction is not a childhood conviction and at least 11 years have passed since the date of the conviction.
- (3) The Scottish Ministers may by regulations modify schedule 1 or 2.

10 Non-disclosable children's hearing outcomes

- (1) For the purposes of this Part, a children's hearing outcome of an individual is a non-disclosable children's hearing outcome if—
- (a) the offence which led to the children's hearing outcome is not a List A offence or a List B offence, or
 - (b) the offence which led to the children's hearing outcome is a List B offence and either of the conditions in subsection (2) is satisfied.
- (2) The conditions are—
- (a) the referral to the children's hearing which led to the children's hearing outcome was discharged under—
 - (i) section 69(1)(b) and (12) of the Children (Scotland) Act 1995, or
 - (ii) section 91(3)(b), 93(2)(b), 108(3)(b) or 119(3)(b) of the Children's Hearings (Scotland) Act 2011,

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(as the case may be),

- (b) at least 5 years and 6 months have passed since the date of the children's hearing outcome.

11 Provision of Level 2 disclosures

- (1) The Scottish Ministers must provide a Level 2 disclosure to an individual who—
 - (a) is 16 years of age or older, and
 - (b) makes an application that complies with section 12.
- (2) The Scottish Ministers may provide a Level 2 disclosure to an individual who—
 - (a) is 12 years of age or older but under 16 years of age, and
 - (b) makes an application that complies with section 12,if it appears to them from the information contained in the application that it is appropriate in the circumstances to provide the disclosure.
- (3) The Scottish Ministers may refuse to provide a Level 2 disclosure to an individual under subsection (1) where they consider a person mentioned in subsection (4) has failed to comply with the code of practice published under section 55.
- (4) The persons are—
 - (a) the accredited body countersigning the application for the disclosure,
 - (b) the lead signatory of the accredited body,
 - (c) a countersignatory of the accredited body,
 - (d) a person mentioned in section 56(1)(b)(i) at whose request the accredited body countersigned the application for the disclosure.
- (5) A Level 2 disclosure provided under subsection (1) or (2) may relate only to the applicant.

12 Level 2 disclosure applications: countersigning and purposes

- (1) An application for a Level 2 disclosure under section 11 must—
 - (a) be countersigned by an accredited body, and
 - (b) include a statement by the accredited body of the purpose for which the disclosure is required.
- (2) The purpose stated in the application in accordance with subsection (1)(b) must be a purpose for which the application of section 4(2)(a) or (b) of the Rehabilitation of Offenders Act 1974 (effect of rehabilitation) is excluded by virtue of an order made by the Scottish Ministers under section 4(4) of that Act.
- (3) In this Part, references to the purpose of a Level 2 disclosure are references to the purpose stated in the application for the disclosure in accordance with subsection (1)(b).

13 Childhood information

- (1) Before providing a Level 2 disclosure to an applicant, the Scottish Ministers must—
 - (a) ascertain whether there is any spent childhood conviction of the applicant that is recorded in central records and that is not a non-disclosable conviction,

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- (b) ascertain whether there is any children's hearing outcome of the applicant that is recorded in central records and that is not a non-disclosable children's hearing outcome, and
 - (c) if there is such a childhood conviction or children's hearing outcome, determine—
 - (i) whether the conviction or outcome is relevant for the purpose of the disclosure, and
 - (ii) whether information about the conviction or outcome ought to be included in the disclosure.
- (2) Where the Scottish Ministers determine that a spent childhood conviction or children's hearing outcome of the applicant is relevant for the purpose of the disclosure and that information about the conviction or outcome ought to be included in the disclosure, they must include in the disclosure such information about the conviction or outcome as they consider appropriate in such form as they consider appropriate.
- (3) On providing a Level 2 disclosure to an applicant that contains information under this section about a spent childhood conviction or children's hearing outcome of the applicant, the Scottish Ministers must notify the applicant of—
- (a) the reasons for their determination that—
 - (i) the conviction or outcome is relevant for the purpose of the disclosure, and
 - (ii) information about the conviction or outcome ought to be included in the disclosure, and
 - (b) the right to make a Level 2 review application under section 20 for a review of the inclusion of the information.

14 Provision of relevant Scottish police information

- (1) Before providing a Level 2 disclosure to an applicant, the Scottish Ministers must request the chief constable to provide any information relating to the applicant which—
- (a) the chief constable reasonably believes to be relevant for the purpose of the disclosure, and
 - (b) in the chief constable's opinion ought to be included in the disclosure.
- (2) The chief constable must comply with any request made under subsection (1) as soon as practicable after receiving it.
- (3) The chief constable must not provide information by virtue of a request under subsection (1) if the chief constable thinks that disclosing the information would be contrary to the interests of the prevention or detection of crime.
- (4) For the avoidance of doubt, information mentioned in subsection (1) may include information with respect to relevant behaviour within the meaning of section 5(1)(a) of the Age of Criminal Responsibility (Scotland) Act 2019.
- (5) However, the chief constable may provide information mentioned in subsection (1) relating to a time when the applicant was under 12 years of age only where—
- (a) the independent reviewer determines, on a review under section 18 of the Age of Criminal Responsibility (Scotland) Act 2019, that the information ought to be included in the Level 2 disclosure and—
 - (i) no appeal under section 20 of that Act is taken, or

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- (ii) such an appeal having been taken, the sheriff confirms the determination under section 20(3)(a) of that Act, or
- (b) the sheriff, on an appeal under section 20 of that Act, determines under subsection (3)(b) of that section that the information ought to be included in the Level 2 disclosure.

15 Provision of relevant overseas police information

- (1) Before providing a Level 2 disclosure to an applicant, the Scottish Ministers must request the chief officer of every relevant overseas police force to provide—
 - (a) any information relating to the applicant which—
 - (i) the chief officer reasonably believes to be relevant for the purpose of the disclosure, and
 - (ii) in the chief officer's opinion ought to be included in the disclosure, and
 - (b) a statement of the chief officer's reasons for—
 - (i) the chief officer's belief that the information is relevant for the purpose of the disclosure, and
 - (ii) the chief officer's opinion that the information ought to be included in the disclosure.
- (2) Where information is received by the Scottish Ministers from the chief officer of a relevant overseas police force in response to a request under subsection (1), 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 information is relevant for the purpose of the disclosure, and
 - (b) whether the information ought to be included in the disclosure.
- (4) The Scottish Ministers may include the information in a Level 2 disclosure only if the effect of the final outcome of proceedings in the review carried out by the independent reviewer (including any appeal against the independent reviewer's decision by virtue of regulations under subsection (5)) is that the information—
 - (a) is relevant for the purpose of the disclosure, and
 - (b) ought to be included in the disclosure.
- (5) The Scottish Ministers may by regulations make further provision in connection with the carrying out of a review by the independent reviewer under this section including, in particular, provision for or about—
 - (a) the provision of information to the independent reviewer for the purpose of a review (including the conferral of powers on the independent reviewer to require the provision of information),
 - (b) giving the applicant an opportunity to make representations,
 - (c) notification of the independent reviewer's decision in a review,
 - (d) an appeal to a sheriff on a point of law against the independent reviewer's decision,
 - (e) what constitutes the final outcome of proceedings for the purposes of subsection (4).
- (6) In this section—

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“chief officer”, in relation to an overseas police force, means the person responsible for the direction of the overseas police force,

“overseas police force” means—

- (a) the States of Jersey Police Force,
- (b) the salaried police force of the Island of Guernsey,
- (c) the Isle of Man Constabulary,
- (d) 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,

“relevant overseas police force” means such overseas police force as may be prescribed.

16 Further information for certain purposes: non-PVG scheme members

- (1) This section applies where—
 - (a) the individual applying for a Level 2 disclosure does not participate in the PVG Scheme, and
 - (b) the purpose of the disclosure is a prescribed purpose.
- (2) Regulations under subsection (1)(b) may prescribe—
 - (a) purposes relating to children, and
 - (b) purposes relating to adults.
- (3) The disclosure must also contain any further information under this section relating to the applicant, as well as the information mentioned in section 8(1)(a) to (e).
- (4) Further information under this section is—
 - (a) where the purpose of the disclosure is one relating to children—
 - (i) a statement of whether the applicant is barred from regulated roles with children,
 - (ii) if the applicant is barred from such roles, the prescribed details of the circumstances in which the applicant became barred,
 - (iii) a statement of whether the Scottish Ministers are considering whether to list the applicant in the children's list,
 - (iv) if the Scottish Ministers are considering whether to list the applicant in the children's list, details of any conditions that the Scottish Ministers have imposed under section 13A(1) of the PVG Act or, if no such conditions have been imposed, a statement of that fact,
 - (v) the prescribed details of every prescribed civil court order in effect in respect of the applicant or a statement that no such order is in effect,
 - (b) where the purpose of the disclosure is one relating to adults—
 - (i) a statement of whether the applicant is barred from regulated roles with adults,
 - (ii) if the applicant is barred from such roles, the prescribed details of the circumstances in which the applicant became barred,
 - (iii) a statement of whether the Scottish Ministers are considering whether to list the applicant in the adults' list,
 - (iv) if the Scottish Ministers are considering whether to list the applicant in the adults' list, details of any conditions that the Scottish Ministers

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- have imposed under section 13A(1) of the PVG Act or, if no such conditions have been imposed, a statement of that fact,
- (v) the prescribed details of every prescribed civil court order in effect in respect of the applicant or a statement that no such order is in effect.

17 Further information for certain purposes: PVG scheme members

- (1) This section applies where—
- (a) the individual applying for a Level 2 disclosure participates in the PVG Scheme, and
 - (b) the purpose of the disclosure is to enable or assist a person (or any other person for whom the person acts) to consider the applicant's suitability to carry out, or to be offered or supplied for, a type of regulated role.
- (2) The disclosure must also contain any further information under this section relating to the applicant, as well as the information mentioned in section 8(1)(a) to (e).
- (3) Further information under this section is—
- (a) a statement confirming that the applicant participates in the PVG Scheme in relation to the type of regulated role to which the purpose of the disclosure relates,
 - (b) a statement of whether the Scottish Ministers are considering whether to list the applicant in the relevant list,
 - (c) if the Scottish Ministers are considering whether to list the applicant in the relevant list, details of any conditions that the Scottish Ministers have imposed under section 13A(1) of the PVG Act or, if no such conditions have been imposed, a statement of that fact, and
 - (d) the prescribed details of every prescribed civil court order in effect in respect of the applicant or a statement that no such order is in effect.
- (4) Subsection (5) applies where—
- (a) an individual applying for a Level 2 disclosure participates in the PVG Scheme in relation to both types of regulated role, and
 - (b) the purpose of the disclosure relates to only one of the types of regulated role.
- (5) Where this subsection applies, the Level 2 disclosure must not disclose information that appears in the applicant's scheme record only because the applicant participates in the PVG Scheme in relation to the other type of regulated role.
- (6) In this section, “the relevant list” means—
- (a) where the type of regulated role to which the purpose of the disclosure relates is a regulated role with children, the children's list,
 - (b) where the type of regulated role to which the purpose of the disclosure relates is a regulated role with adults, the adults' list.

18 Provision of Level 2 disclosure to accredited bodies

- (1) Where a Level 2 disclosure is provided to an applicant, the applicant may, within the prescribed period, either—
- (a) request that the Scottish Ministers arrange for the disclosure to be made available to the accredited body that countersigned the applicant's application,
 - or

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- (b) notify the Scottish Ministers that the applicant intends to make a Level 2 review application under section 20 in relation to the disclosure.
- (2) If the applicant makes a request under subsection (1)(a), the Scottish Ministers must comply with the request.
- (3) Where notification has been given under subsection (1)(b), the notification is to be treated as withdrawn if, before the end of the prescribed period, the applicant makes a request under subsection (1)(a).
- (4) If no request or notification is made or given under subsection (1) within the prescribed period, at the end of that period the disclosure lapses and nothing further may be done in relation to it.
- (5) Subsection (4) does not prevent the applicant subsequently making another application for a Level 2 disclosure for the same purpose.
- (6) Otherwise, the Scottish Ministers must not make the disclosure available to the accredited body or any other person.

19 Crown employment

- (1) This section applies to an application under section 11 for a Level 2 disclosure if the application is accompanied by a statement by a person mentioned in subsection (3) stating—
 - (a) the purpose for which the disclosure is required, and
 - (b) that it is required in the course of considering the applicant's suitability for an appointment by or under the Crown.
- (2) The purpose stated in the statement in accordance with subsection (1)(a) must be a purpose for which the application of section 4(2)(a) or (b) of the Rehabilitation of Offenders Act 1974 (effect of rehabilitation) is excluded by virtue of an order made by the Scottish Ministers under section 4(4) of that Act.
- (3) Any of the following persons may make a statement for the purposes of subsection (1)—
 - (a) a Minister of the Crown,
 - (b) a member of the Scottish Government,
 - (c) any other office-holder in the Scottish Administration,
 - (d) a nominee of any person mentioned in paragraphs (a) to (c).
- (4) The requirement in section 11(1)(b) or (2)(b) that the application comply with section 12 does not apply.
- (5) Any reference in this Part to—
 - (a) the accredited body that countersigned an application for a Level 2 disclosure, or
 - (b) the accredited body to whom a Level 2 disclosure is made available,
 is, in relation to an application to which this section applies or a Level 2 disclosure made available in pursuance of such an application, to be read as a reference to the person who made the statement for the purpose of subsection (1).

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- (6) Any reference in this Part to the purpose of the disclosure is, in relation to an application to which this section applies, to be taken to be a reference to the purpose mentioned in subsection (1)(a).

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