POLICY NOTE

THE DISCLOSURE INFORMATION (ACCREDITED BODIES) (SCOTLAND) REGULATIONS 2025

SSI 2025/5

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 49(5) and (7)(c)(iii), 51(5), 54 and 61 of the Disclosure (Scotland) Act 2020 and all other powers enabling them to do so.

This instrument is subject to the negative procedure.

Summary Box

These Regulations make further provision in connection with the register of accredited bodies maintained by the Scottish Ministers under section 46 of the Disclosure (Scotland) Act 2020 ("the Disclosure Act") and registration in it.

An accredited body is a person registered the register of accredited bodies in relation to:

a) the making of applications for Level 1 disclosures under section 2 of the Disclosure Act on behalf of an individual,
b) the countersigning of applications for Level 2 disclosures under section 11 of the Disclosure Act, or
c) both the making of applications for Level 1 disclosures under section 2 and the countersigning of Level 2 disclosures under section 11.

Policy Objectives

1. Disclosure Scotland is an executive agency of the Scottish Government that provides criminal record disclosures, maintains the Protecting Vulnerable Groups Scheme ("the PVG Scheme") and keeps lists of individuals barred from working with children and 'protected' adults on behalf of Scottish Ministers.

2. The Disclosure Act reforms the disclosure regime in Scotland repealing Part 5 of the Police Act 1997 ("the Police Act") as it applies in Scotland and also making amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act") under which Scottish Ministers administer the PVG Scheme.

3. Part 1 of the Disclosure Act makes provision for new disclosure products. The new Level 1 disclosure replaces the criminal conviction certificate (known as the basic disclosure) issued under the Police Act. The Level 2 disclosure replaces the criminal record certificate (known as the standard disclosure) and the enhanced criminal record certificate (known as the enhanced disclosure) issued under the Police Act and the

scheme record and short scheme record issued under the PVG Act. Level 2 disclosures will be known as higher level disclosures, which is a collective term for types of disclosure that provide for access to spent convictions.

Background and changes to registration

4. Under section 120 of the Police Act, a person can become a registered person to countersign applications for higher level disclosure. The Disclosure Act replaces that register with the register of accredited bodies.

5. A person may apply to be registered in the register of accredited bodies to apply for disclosure information if they are: a body corporate or unincorporated, a statutory office holder or an individual who is 18 years of age or older and employs other persons in the course of a business.

6. An accredited body is a person registered in the register of accredited bodies in relation to:

    a) the making of applications for Level 1 disclosures under section 2 of the Disclosure Act on behalf of an individual
    b) the countersigning of applications for Level 2 disclosures under section 11 of the Disclosure Act, or
    c) both the making of applications for Level 1 disclosures under section 2 and the countersigning of Level 2 disclosures under section 11.

7. An individual can make an application for a Level 1 disclosure without an accredited body in accordance with section 2 of the Disclosure Act. However, organisations can also make a Level 1 disclosure on behalf of an individual or individuals in accordance with section 3 of the Disclosure Act. If an organisation wishes to do so they must be registered as an accredited body.

8. All applications for Level 2 disclosure must be countersigned by an accredited body.

9. Section 56 of the Disclosure Act allows an accredited body to countersign a Level 2 disclosure application on their own behalf, for example, for their own employees or volunteers. They can also countersign on behalf of others, this is often referred to as an “umbrella body” service, as is provided for by section 43 of the Disclosure Act. Umbrella bodies exist to help organisations who seek support for the day to day administration of the disclosure process. Organisations who apply via an umbrella body remain bound by the Code of Practice and other legal obligations under the Disclosure Act and PVG Act.

10. The persons on whose behalf an accredited body can act must either be someone who would be eligible in terms of section 47(3) to become an accredited body (but who is

not registered as an accredited body), or an individual who employs other persons but not in the course of a business. The ability to act on behalf of another person is subject to the condition that the person is asking a question about the individual who is the subject of the disclosure for the purpose of the disclosure, which may, for example, be in connection with recruitment into paid or voluntary work.

The purpose of the accredited bodies register

11. A system of registration of accredited bodies is important to ensure the protection of personal data. Disclosures issued by Disclosure Scotland may contain sensitive and personal information, including convictions, cautions and in the case of Level 2 disclosures, other relevant information. In order to protect the rights and privacy of individuals to whom this information relates, it is important that this information is handled appropriately by those organisations to whom it is released.

12. Individuals applying to be registered in relation to the countersigning of Level 2 disclosures will be vetted by Disclosure Scotland and suitability checks will continue to be made while they are registered. Suitability decisions will be made having regard to the following information:

    - 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 (i.e. equivalent to the content that would be appear on a Level 2 disclosure)
    - whether the individual is barred from regulated roles with children, adults or both
    - whether the Scottish Ministers are considering whether to list the individual in the children's list or the adult's list

13. Individuals applying to be registered in the register of accredited bodies to make Level 1 disclosures only will not be subject to suitability checks. This is a proportionate approach based upon the more limited access to disclosure information through a Level 1 disclosure in comparison to Level 2 disclosures, with the latter including content such as spent conviction information and other relevant information, which do not appear on a Level 1 Disclosure.

14. All accredited bodies, even those who only countersign Level 1 disclosures, must comply with the Code of Practice in connection with the use of disclosure information. This is published on Disclosure Scotland's website (https://www.mygov.scot/disclosure-code-of-practice). It covers the handling of disclosure information and sets out in detail what the responsibilities of accredited bodies are and what they must do. Accredited bodies must put in place robust procedures for handling disclosure records securely. Disclosure Scotland can carry

out audits of accredited bodies, alongside other engagement, to ensure they are complying with the Code of Practice.

15. Disclosure Scotland also use their communications channels (such as e-bulletins, social media, website news articles and other publications) to promote the Code of Practice to organisations who will become accredited bodies, and also provide free training for accredited bodies that includes guidance on the Code of Practice.

16. The Disclosure Act sets out, in sections 46 to 56, some provisions in relation to the register of accredited bodies and registration in it. These Regulations make further necessary provision in relation to the register and registration in it.

17. Regulation 2 and the schedule of these Regulations set out the information about an accredited body that is to be included in the register.

18. Part 2 of the schedule provides that information about the type of registration that any accredited body holds must be included in the entry for the accredited body in the register.

19. Part 2 also provides that, where the accredited body is registered to countersign Level 2 disclosures, details of the purpose (or purposes) that will be stated by the accredited body when countersigning a Level 2 application in accordance with section 12(1)(b) of the Disclosure Act are to be included in the register. This is so that a cross-check can be completed by Disclosure Scotland, against the register, to ensure that the Level 2 disclosure that the accredited body is countersigning is for a valid purpose and is in accordance with that accredited body's registration.

20. Section 12(2) of the Disclosure Act sets out that the purpose of a Level 2 disclosure must be one in relation to which the usual rules in sections 4(2)(a) and (b) of the Rehabilitation of Offenders Act 1974, about not having to disclose conviction when asked about criminal history, have been excluded by another made by the Scottish Ministers. The Rehabilitation of Offenders Act 1974 (Exclusion and Exceptions) (Scotland) Order 2013 ("the 2013 Order") made under section 4(4) of the 1974 Act sets out circumstances in which an individual cannot deny the existence of a criminal conviction, even if it is spent. Article 4 of the 2013 Order excludes the application of section 4(2) in relation to questions that are listed in schedule 3 of the 2013 Order – those are questions asked to assess the suitability of an individual for a variety of occupations, positions, licences and registrations. The reference to "questions" in this context is to be read in the context of section 4(2)(a) and (b) of the 1974 Act and means questions about a person's previous convictions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a judicial authority.

21. Part 2 of the schedule also provides that details of whether the accredited body is countersigning applications for Level 2 disclosures for itself or on another person's behalf in accordance with section 56(1)(b) of the Disclosure Act (i.e. as an "umbrella body") is to be included in the register. If the accredited body is acting as an umbrella body, details of the nature of the questions to be asked for the purpose of any disclosure by the other person on whose behalf the accredited body is acting must also be included in the register. Again, this is so that a cross-check can be completed by Disclosure Scotland, against the register, to ensure that the Level 2 disclosure that the accredited body is countersigning on behalf of the other person is for a valid purpose.

22. Parts 3, 4 and 5 of the schedule provide for the relevant personal and business information that must be included relevant to the type of accredited body applying for registration. This is required for the purposes of carrying out suitability checks, and to allow Disclosure Scotland to correspond with accredited bodies, lead signatories and countersignatories as required.

23. Regulation 2 also sets out that an accredited body must notify Scottish Ministers about any changes to the information held in the register in relation to that accredited body.

<u>Accredited bodies: refusal of registration and removal from the register of accredited bodies</u>

24. Regulation 3 of these Regulations makes further provision in relation to a decision by the Scottish Ministers to refuse an accredited body's registration in, or remove an accredited body from, the register of accredited bodies under the Disclosure Act. This includes provision about the time period within which an applicant or accredited body may make representations when given the opportunity to do so.

25. Regulation 3 also provides that where Scottish Ministers receive information that a relevant individual in relation to an accredited body has died or is incapable, due to physical or mental impairment, of acting in relation to a disclosure request, the Scottish Ministers may take necessary steps to verify this information.

26. Regulation 4 of these Regulations sets out the details of a lead signatory or a countersignatory that must be included in an application made under section 51 of the Disclosure Act which contains a nomination of a lead signatory or countersignatory.

27. Section 51 of the Disclosure Act section sets out what nominations must or can be made by a person applying for registration in the register of accredited bodies. These are set out below:

    - Where an application for registration in the register of accredited bodies is made by a body corporate or unincorporated or a statutory office-holder, they

must nominate a lead signatory. A lead signatory is an individual authorised to act in relation to the registration of an accredited body and who has overall responsibility for the accredited body acting in relation to any disclosure requests (i.e. making a Level 1 application on behalf of an individual or countersigning an application for Level 2 disclosure).

If the body corporate or unincorporated or statutory office holder are seeking registration for the purposes of countersigning Level 2 disclosures, they may also appoint one or more countersignatories. A countersignatory is an individual authorised to countersign only applications for Level 2 disclosures on behalf of the accredited body The lead signatory can also act in the capacity of a countersignatory.

- Where the accredited body application is made by a sole business proprietor in relation to the countersigning of applications for Level 2 disclosure, they may nominate one or more countersignatories.

28. If the Scottish Ministers accept the nomination of a lead signatory or countersignatory then they must include the details set out in regulation 3 of these Regulations in the entry for the accredited body in the register.

29. An individual cannot act as lead signatory or a countersignatory of an accredited body unless those details are included in the entry for the accredited body in the register of accredited bodies.

30. Regulation 5 of these Regulations makes further provision in relation to a decision by the Scottish Ministers to refuse the nomination of a lead signatory or countersignatory under the Disclosure Act. This includes provision about the time period within which a lead signatory or countersignatory may make representations when given the opportunity to do so.

31. Regulation 5(3) and (4) provides that where an accredited body has been notified that the Scottish Ministers have refused to accept the nomination of a lead signatory or removes a lead signatory's details from the accredited body's entry in the register, the accredited body must nominate a substitute lead signatory within 28 days of the date of receipt of that notification.

32. Regulation 5(5) provides that no individual may be nominated as a lead signatory or countersignatory of an accredited body if the Scottish Ministers have, within 2 years prior to the date on which the nomination application is received by them—
    - refused to accept, or refused to continue to accept, the nomination of the individual as a countersignatory under regulation 4(3) of the Registration Regulations

- refused to accept the nomination of the individual as a lead signatory or countersignatory of an accredited body under section 52(2) of the Disclosure Act, or
- removed all of the prescribed details of the lead signatory or countersignatory from the entry of an accredited body under section 52(3) of the Disclosure Act

33. Regulation 6 of these Regulations provides that where a decision has been reviewed by the Scottish Ministers (in accordance with section 53(6) of the Disclosure Act), the Scottish Ministers must notify the person who applied for the review of the outcome.

34. Regulation 7 of these Regulations sets out the time period which must elapse before any accredited body refused registration, or removed from the register, may apply again for registration. In the case of an individual removed from the register under the Disclosure Act, or a registered person under the Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2010 ("the Registration Regulations") because of them being no longer likely to countersign disclosure requests, the time period is 28 days.

35. In the case of an accredited body removed under the Disclosure Act, or a registered person under the Registration Regulations, removed or refused on the basis of unsuitability or breached conditions of their registration, the time period is 2 years. The purpose of this two-year period is to give sufficient time to allow for a change of circumstances or relevance with regard to the reason for refusal. It does not automatically mean that the individual will be accepted on to the register after the two year point. This continues the same arrangements as are in place for the register previously held under the Police Act.

36. Regulations 5(5) and 7 of these Regulations apply to both existing registered persons included in the register under the Police Act and accredited bodies registered in the register under the Disclosure Act to ensure that anyone refused or removed under the previous legislation continues to be subject to the applicable periods.

37. Regulation 9 of these Regulations sets out the meaning of relevant police force for the purposes of section 49(5) of the Disclosure Act. This is a police force that has indicated on central records that it holds non conviction information relating to the individual or the Scottish Ministers have reason to believe hold non conviction information in relation to the individual. Central records are defined in section 69 of the Disclosure Act and are prescribed in regulation 3 of the Level 1 and Level 2 Disclosure Information (Scotland) Regulations 2024**1**. This also includes information shared via the Police Local Cross Referencing database (PLX), a system that allows UK police forces to share information and intelligence about individuals.

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1 The Level 1 and Level 2 Disclosure Information (Scotland) Regulations 2024 (https://www.legislation.gov.uk/ssi/2024/315/contents/made) (SSI 2024/315)

Prescribed body

38. Regulation 10 of these Regulations prescribes the tri-service serious crime unit as a body for the purposes of section 49(7) of the Disclosure Act to whom requests for information may be made under section 49(2) of that Act. This is required following amendments that were made to the list of relevant police forces in the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 by The Armed Forces (Tri-Service Serious Crime Unit) (Consequential Amendments) Regulations 2022 (S.I. 2022/1051) (https://www.legislation.gov.uk/uksi/2022/1051/contents/made).

39. Regulation 10 also sets out that any reference to the chief officer of a police force in section 49 of the Disclosure Act is taken to be a reference to the Provost Marshal for serious crime.

40. Regulation 8 of these Regulations sets out a condition for registration in the register of accredited bodies. Any registration fee payable by an accredited body under these Regulations must be paid within 14 days of the Scottish Ministers requiring payment or the Scottish Ministers may suspend the accredited body and refuse to process disclosure application made by the accredited body.

41. Regulations 11, 12 and 13 set out the fees payable for:

(a) applications for registration and for nomination of lead signatories and countersignatories in the register of accredited bodies,
(b) an annual fee for continued registration, and
(c) a change in registration type

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

42. The Scottish Ministers have made the following statement regarding children's rights:

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Disclosure Information (Accredited Bodies) (Scotland) Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

43. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

44. The Disclosure Act received wide cross-party support during its passage through Parliament and was passed unanimously. Disclosure Scotland are continuing to engage with external stakeholders as part of the implementation of the Disclosure Act.

45. Disclosure Scotland published a consultation paper on 25 April 2018. This was distributed widely to a large number of stakeholders, including over 3,000 registered bodies. There were 353 responses, 269 from organisations and 84 from individuals. There were responses from a range of stakeholders with varying backgrounds including judicial bodies, the legal sector, local government, voluntary organisations, the health sector and individual scheme members.

46. There was extensive engagement with stakeholders during the consultation period. This included group discussions and meetings with individual groups or organisations, in total 38 engagement sessions took place during the formal consultation period. During this time Disclosure Scotland User Researchers also engaged with a variety of stakeholders. Since April 2016 the user research team carried out a significant amount of research, which has included a range of users, including;

    - individuals with and without experience of using Disclosure Scotland's services,
    - individuals with convictions,
    - care experienced people,
    - people with disabilities, including blind participants, deaf participants, people with low cognitive skills, dyslexia, dyspraxia,
    - organisations – including various roles e.g. HR, admin staff, countersignatories,
    - charities, and
    - voluntary organisations.

47. The results of the consultation informed further development of the policy and (Disclosure) (Scotland) Bill provisions. The Scottish Government published its response (https://www.gov.scot/publications/government-response-protection-vulnerable-groups-disclosure-criminal-information-consultation/pages/1/) to the consultation on 13 June 2019. The need for a mandatory scheme received overwhelming stakeholder support at various stages of engagement and consultation on the Bill. It was also recommended in the Health and Sport Committee's report on Child Protection in Sport (https://digitalpublications.parliament.scot/Committees/Report/HS/2017/4/26/Child-Protection-in-Sport#Introduction).

48. A communications campaign is underway to raise awareness of the impact of the changes brought about by the Disclosure Act. Disclosure Scotland use a range of communication channels to inform stakeholders of the new mandatory requirements, the associated offences.

49. Throughout the implementation period, Disclosure Scotland have undertaken targeted engagement with people and organisations who will become accredited bodies to maximise awareness of the changes being made within the Disclosure Act and these Regulations.

50. Consultation and engagement on increasing accredited body fees was undertaken in 2018 and again in 2024. Disclosure Scotland fees: discounting, waiver and accredited bodies consultation (https://consult.gov.scot/disclosure-scotland/fees-discounting-waivers-and-accredited-bodies/) ran for 12 weeks from March to May 2024, formally consulting on a narrow range of proposals on changes to Disclosure Scotland's discounting and waiver approach, including on proposed fee model for accredited bodies. To support the public consultation, online and in-person engagement sessions were held for specific sectors and businesses, including:

    - Public sector
    - Private sector
    - Disclosure services (Umbrella body)
    - Volunteer involved organisations (including sports, health and social care, children's services and faith & belief organisations)

51. A further 23 events were held with 268 attendees across 175 organisations.

52. The Scottish Government reported on analysis (https://www.gov.scot/publications/disclosure-scotland-fees-discounting-waivers-accredited-bodies-consultation-analysis-report/) including on accredited body fee approach, in January 2025. No significant issues were raised around the increase by organisations directly impacted. In the quantitative figures there was a relatively high level of opposition, however, due to media attention on fees for volunteers, there was a trend of respondents providing narrative in the qualitative questions that made it clear they had not understood the nature of registration or accredited bodies and were answering each question in the consultation solely in relation to individuals volunteering. In-person engagement – where officials were able to give clarification on questions – found a higher rate of support with 31% supportive, 17% unsupportive and 52% of those attending unsure at that point of engagement.

53. There was concern from some volunteer involved organisations and volunteers about increasing registration costs impacting annual budgets. Organisations will still be able to access disclosures through umbrella body services, including Volunteer Scotland Disclosure Services which is funded by Disclosure Scotland to provide this function for the sector.

54. Disclosure Scotland have also undertaken engagement sessions with organisations to gather feedback on the current Code of Practice to inform its development for the purposes of implementation.

55. In addition to the publication of the Code of Practice itself, Disclosure Scotland will continue to provide training and guidance on the Code of Practice and obligations placed upon an accredited body by the Disclosure Act and these Regulations. This commitment to providing improved resources to support stakeholders is one that will

continue throughout the transition to the refreshed disclosure regime under the Disclosure Act.

Impact Assessments

56. A suite of Impact Assessments was completed as part of the Disclosure (Scotland) Bill process:

    - Disclosure (Scotland) Bill: Fairer Scotland Duty assessment (https://www.gov.scot/publications/disclosure-scotland-bill-impact-assessment-fairer-scotland-duty/)
    - Disclosure (Scotland) Bill: children rights and wellbeing impact assessment (https://www.gov.scot/publications/disclosure-scotland-bill-impact-assessment-crwia/)
    - Disclosure (Scotland) Bill: data protection impact assessment (https://www.gov.scot/publications/disclosure-scotland-bill-impact-assessment-dpia/)
    - Disclosure (Scotland) Bill: equality impact assessment (https://www.gov.scot/publications/disclosure-scotland-bill-impact-assessment-eqia/)
    - Disclosure (Scotland) Bill: partial Business and Regulatory Impact Assessment (https://www.gov.scot/publications/disclosure-scotland-bill-impact-assessment-partial-bria/)

57. An Equalities Impact Assessment and an Impact Assessment regarding Children's Rights and Wellbeing have been completed for these Regulations. These will be published alongside this instrument on legislation.gov.uk. No negative equality impact issues have been identified. No impact on children's rights have been identified.

58. A Fairer Scotland Duty Assessment and an Island Communities Impact Assessment screening exercise was undertaken. No impacts were identified during screening and, therefore, a full impact assessment was not done.

Financial Effects

59. A Business and Regulatory Impact Assessment (BRIA) has been completed and published alongside the regulation. The impact of this policy is an increase in costs to the fees currently payable for registration. This will impact people and organisations who need to be registered. This will account for a £125 increase for responsible bodies who chose to register and are not already registered bodies as there is no fee and a £50 increase for registered bodies.

60. There has also been a cost of the public budget from providing the 'responsible body' function to organisations – primarily private businesses - without charging them for registration, despite the costs to the Government being the same as administering registration for registered bodies. Charging a fee for this will ensure that private sector businesses benefiting from this government service pay towards maintenance of their registration.

61. Raising the fee is projected to increase income modestly from registration from £370,000 to £555,000 in 2025-26, assisting in covering the cost of delivering this aspect of Disclosure Scotland's services.

62. The "umbrella body" function currently offered will continue. An organisation who does not want to register with Disclosure Scotland can use another registered company to process their staff disclosures.

63. The Scottish Ministers have had regard to the circumstances in which the fees are payable and the desire to maintain an appropriate balance between quality of the performance of the PVG Scheme, costs of achieving that quality and the income from fees.

Scottish Government
Disclosure Scotland

January 2025