SCOTTISH STATUTORY INSTRUMENTS

2025 No. 26

PROTECTION OF VULNERABLE GROUPS

The Level 1 and Level 2 Disclosure Review Application (Scotland) Regulations 2025

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Coming into force in accordance with regulation 1(1)

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SCHEDULE — Level 2 disclosures: review of relevant overseas police information by the independent reviewer

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 4(1), 5(1), 15(5), 15(6), 18(1), 20(1), 24(2), 26(2), 31(6)(a), 36(b), 37(1) and 92(1) of the Disclosure (Scotland) Act 2020(**a**) and all other powers enabling them to do so.

PART 1

Introductory and interpretation

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Level 1 and Level 2 Disclosure Review Application (Scotland) Regulations 2025 and come into force on the same day as section 20 of the Disclosure Act.

(2) In these Regulations—

"Disclosure Act" means the Disclosure (Scotland) Act 2020,

"working day" means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971(**b**), is a bank holiday in Scotland.

PART 2

Level 1 review applications

Prescribed period following provision of Level 1 disclosure

2. The prescribed period for the purposes of section 4(1) of the Disclosure Act is ten working days beginning with the date on which the Level 1 disclosure was provided to the applicant.

Application for review: prescribed period

3. The prescribed period for the purposes of section 5(1) of the Disclosure Act is ten working days beginning with the date on which the Level 1 disclosure was provided to the applicant.

PART 3

Level 2 review applications

Review of relevant overseas police information by the independent reviewer

4. Where information is received by the Scottish Ministers from the chief officer in response to a request under section 15(1) of the Disclosure Act, the schedule applies.

Relevant overseas police force

5. For the purposes of section 15(6) of the Disclosure Act, "relevant overseas police force" means an overseas police force which—

(a) has indicated on central records or the Police Local Cross Reference Database that it holds non-conviction information relating to the individual, or

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(**a**) 2020 asp 13. Section 69 contains a definition of "prescribed" relevant to the exercise of the statutory powers under which these Regulations are made.

(**b**) 1971 c. 80.

(b) the Scottish Ministers have reason to believe holds non-conviction information in relation to the individual.

Prescribed period following provision of a Level 2 disclosure

6. The prescribed period for the purposes of section 18(1) of the Disclosure Act is ten working days beginning with the date on which the Level 2 disclosure is provided to the applicant.

Application for review: prescribed period

7. The prescribed period for the purposes of section 20(1) of the Disclosure Act is ten working days beginning with the date on which notification is given by the applicant in accordance with section 18(1)(b) of the Disclosure Act.

Review of relevant police information by the independent reviewer: prescribed period

8. The prescribed period for the purposes of section 24(2) of the Disclosure Act is ten working days beginning with the date on which notification is given to the applicant by the Scottish Ministers of the chief constable's decision under section 23(4) of the Disclosure Act.

Review of inclusion of removable convictions by the independent reviewer: prescribed period

9. The prescribed period for the purposes of section 26(2) of the Disclosure Act is ten working days beginning on the date on which notification is given to the applicant by the Scottish Ministers of their decision under section 25(3) of the Disclosure Act.

Subsequent Level 2 review applications: prescribed period

10. The period specified for the purposes of section 31(6)(a) of the Disclosure Act is—

(a) ten years if, on the date of the final outcome of the proceedings, the individual was 18 years of age or over, or

(b) five years if, on the date of the final outcome of the proceedings, the individual was under 18 years of age.

NATALIE DON-INNES
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
30th January 2025

SCHEDULE

Regulation 4

Level 2 disclosures: review of relevant overseas police information by the independent reviewer

Review by the independent reviewer

1.—(1) This paragraph applies where the Scottish Ministers have arranged for the independent reviewer to carry out a review in accordance with section 15(2) of the Disclosure Act.

(2) The Scottish Ministers must provide to the independent reviewer—

(a) the information provided by the chief officer in response to the request under section 15(1)(a) of the Disclosure Act,

(b) the statement of the chief officer's reasons for the chief officer's decision provided in response to the request under section 15(1)(b) of that Act.

(3) In carrying out the review, the independent reviewer—

(a) must by notice give the applicant—

(i) a copy of the information provided to the independent reviewer under sub-paragraph (2),

(ii) an opportunity to make representations,

(b) may by notice require any person mentioned in sub-paragraph (4) to provide the independent reviewer with information which the independent reviewer—

(i) believes the person holds, and

(ii) considers is necessary to carry out the review.

(4) The persons are—

(a) the applicant,

(b) the Scottish Ministers, and

(c) any other person the independent reviewer considers appropriate.

(5) A notice under—

(a) sub-paragraph (3)(a) must specify the period within which the applicant may make representations,

(b) sub-paragraph (3)(b) must specify the information sought and the period within which it must be provided.

(6) In reaching a decision in the review, the independent reviewer must take account of any statement of reasons, representations or information received by virtue of sub-paragraphs (2) and (3).

Notification of independent reviewer's decision

2.—(1) On concluding a review under paragraph 1, the independent reviewer must notify the persons mentioned in sub-paragraph (2) of the independent reviewer's—

(a) decision under section 15(3) of the Disclosure Act, and

(b) reasons for the decision.

(2) The persons are—

(a) the applicant, and

(b) the Scottish Ministers.

Appeal against the independent reviewer's decision

3.—(1) An appeal may be taken, by the applicant, against the independent reviewer's decision under section 15(3) of the Disclosure Act.

(2) The appeal is to be—

(a) to a sheriff, and

(b) on a point of law only.

(3) The appeal may be taken before the end of the period of 3 months, beginning with the date on which notification was given to the applicant of the independent reviewer's decision in accordance with paragraph 2 of this schedule.

(4) If, before the end of that period, the applicant notifies the Scottish Ministers that the applicant does not intend to take an appeal under this paragraph, the applicant loses the right to take an appeal on the date on which that notification is given.

(5) In an appeal under this paragraph, the sheriff must—

(a) confirm the independent reviewer's decision, or

(b) quash the decision and substitute it for the sheriff's own decision.

(6) Proceedings in an appeal under this paragraph may take place in private if the sheriff considers it appropriate in all the circumstances.

(7) The decision of the sheriff in an appeal under this paragraph is final.

Provision of a Level 2 disclosure on conclusion of review proceedings

4.—(1) This paragraph applies where—

(a) a review under paragraph 1 has been carried out by the independent reviewer, and

(b) proceedings in the review have finally concluded.

(2) The Scottish Ministers must provide the applicant with a Level 2 disclosure as if the applicant had made an application on the date on which proceedings in the review finally conclude.

(3) If the effect of the final outcome of proceedings in the review is that the information received by the Scottish Minsters from the chief officer in response to a request under section 15(1) of the Disclosure Act—

(a) is not relevant for the purpose of the Level 2 disclosure, and

(b) ought not to be included in the Level 2 disclosure,

the Scottish Ministers must exclude the information from the Level 2 disclosure to be provided under sub-paragraph (2).

(4) For the purposes of this paragraph, proceedings in the review finally conclude on whichever of the following occurs last—

(a) where the independent reviewer's decision under section 15(3) of the Disclosure Act is that the information is not relevant for the purpose of the Level 2 disclosure and ought not to be included in the Level 2 disclosure, the date of the independent reviewer's decision,

(b) where the independent reviewer's decision under section 15(3) of the Disclosure Act is that the information is relevant for the purpose of the Level 2 disclosure and ought to be included in the Level 2 disclosure and no appeal is taken—

(i) the date on which the applicant notified the Scottish Ministers under paragraph 3(4) of this schedule, or

(ii) the expiry of the period within which the applicant could have taken an appeal (see paragraph 3(3) of this schedule),

(c) where the independent reviewer's decision under section 15(3) of the Disclosure Act is that the information is relevant for the purpose of the Level 2 disclosure and ought to be

included in the Level 2 disclosure and an appeal is taken by an applicant under paragraph 3(1) of this schedule, the date of the sheriff's decision in the appeal.

(5) For the purposes of section 15(4) of the Disclosure Act and this paragraph, "the final outcome of proceedings" means—

(a) where sub-paragraph (4)(a) or (4)(b) of this regulation applies, the independent reviewer's decision as notified in accordance with paragraph 2 of this schedule,

(b) where sub-paragraph (4)(c) of this regulation applies, the sheriff's decision.

(6) Sub-paragraphs (7) and (8) apply where—

(a) a new Level 2 disclosure is provided to an applicant under paragraph 4(2),

(b) information is excluded from the new Level 2 disclosure by virtue of paragraph 4(3),

(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.

(7) 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 sub-paragraph (6)(d).

(8) The information is to be treated for the purposes of the PVG Act as not being vetting information.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with the procedure for the carrying out of reviews (whether by the Scottish Minsters, the chief constable or the independent reviewer) under Part 1 of the Disclosure (Scotland) Act 2020 ("the Disclosure Act") in relation to any of the information included in a Level 1 or Level 2 disclosure.

Part 1 of these Regulations sets out the formal citation and commencement information and defines terms which recur throughout the Regulations.

Part 2 of these Regulations sets out the prescribed periods within which a Level 1 disclosure applicant may:

- request that the Scottish Ministers arrange for the applicant's Level 1 disclosure to be made available using electronic communications to any person that the applicant specifies (regulation 2),
- notify the Scottish Ministers that the applicant intends to make a Level 1 review application under section 5 of the Disclosure Act (regulation 2),
- apply to the Scottish Ministers for a review of the accuracy of any of the information contained in the Level 1 disclosure (regulation 3).

Regulation 4 and the schedule make further provision in connection with the carrying out of a review by the independent reviewer under section 15 of the Disclosure Act in relation to relevant overseas police information.

Regulation 5 prescribes the meaning of "relevant overseas police force" for the purposes of requests made under section 15(1) of the Disclosure Act.

The remainder of Part 3 sets out various prescribed periods within which a Level 2 disclosure applicant may:

- request that the Scottish Ministers arrange for the applicant's Level 2 disclosure to be made available to the accredited body who countersigned the application (regulation 6),
- notify the Scottish Ministers that the applicant intends to make a Level 2 review application under section 20 of the Disclosure Act (regulation 6),
- apply to the Scottish Ministers for a review of the accuracy of any of the information contained in, or a review of any reviewable information that is included in, the Level 2 disclosure (regulation 7),
- request that the Scottish Ministers arrange for the independent reviewer to carry out a review of any relevant police information included in the Level 2 disclosure (regulation 8),
- request that the Scottish Ministers arrange for the independent reviewer to carry out a review of any removable convictions included in the Level 2 disclosure (regulation 9),
- specify information that was previously determined to be relevant for the purpose of a Level 2 disclosure and included in that disclosure, in any review application made in relation to a subsequent Level 2 disclosure provided for the same purpose (regulation 10).

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