

DISCLOSURE (SCOTLAND) ACT 2020

EXPLANATORY NOTES

PROVISION BY PROVISION COMMENTARY

Part 1: Disclosure of criminal history and other information

Level 1 disclosures: review applications

Section 5: Level 1 disclosure: application for review

18. The applicant can, within a period to be set by regulations subject to the negative procedure, request a review of the accuracy of any information included in the Level 1 disclosure. In the case of Level 1 disclosures provided electronically, the applicant can only seek a review where they have first notified Ministers of their intention to do so. Applications for review are to be known as a “Level 1 review applications”.

Section 6: Review of accuracy of information by the Scottish Ministers

19. This section makes similar provision to the corrections process provided for under section 117 of the 1997 Act. Where a Level 1 review application seeks a review of the accuracy of any information in the disclosure, Ministers must carry out the review and must decide whether the information in question is accurate. They must notify the applicant of their decision.
20. There is no provision for a further review by the independent reviewer on the grounds of inaccuracy. This is because an accuracy review under section 6 is administrative in nature to enable the correction of the content of the disclosure, for example an error in the applicant’s name, date of birth, address, or if the applicant has provided evidence to rebut the age presumption (see section 40).

Section 7: Provision of new Level 1 disclosure on conclusion of review proceedings

21. Once Ministers have made their decision under section 6(3), they must provide a new Level 1 disclosure to the applicant. The applicant is treated as having made a new application for a Level 1 disclosure on the date on which Ministers made the decision under section 6(3). If Ministers have determined that information within the Level 1 disclosure is inaccurate they are required under subsection (3) to give effect to that decision by correcting any inaccurate information and ensuring the new Level 1 disclosure contains corrected information.