

*Status:* This version of this cross heading contains provisions that are prospective.

*Changes to legislation:* There are currently no known outstanding effects for the Disclosure (Scotland) Act 2020, Cross Heading: Age of Criminal Responsibility (Scotland) Act 2019. (See end of Document for details)

## SCHEDULE 5 CONSEQUENTIAL AND MINOR MODIFICATIONS

PROSPECTIVE

### PART 1

#### MODIFICATIONS OF ENACTMENTS IN CONSEQUENCE OF PART 1

##### *Age of Criminal Responsibility (Scotland) Act 2019*

- 7 (1) The Age of Criminal Responsibility (Scotland) Act 2019 is amended as follows.
- (2) In section 8 (disapplication of sections 6 and 7)—
- (a) in subsection (1), for the words from “in—” to the end substitute “ in a Level 2 disclosure. ”,
  - (b) in subsection (3)(a), for “an enhanced criminal record certificate or, as the case may be, a scheme record” substitute “ a Level 2 disclosure ”,
  - (c) in subsection (4)—
    - (i) in paragraph (a), for “for which the certificate or, as the case may be, scheme record is provided” substitute “ of the disclosure ”,
    - (ii) in paragraph (b), for “certificate or record” substitute “ Level 2 disclosure ”,
  - (d) subsection (5) is repealed,
  - (e) in subsection (6), for “certificate or, as the case may be, scheme record” substitute “ Level 2 disclosure ”,
  - (f) in subsection (7), for “certificate or record” substitute “ Level 2 disclosure ”.
- (3) In section 10 (disclosure of information relating to time when person under 12), subsections (1), (2) and (4) are repealed.
- (4) In section 11 (independent reviewer), in paragraph (a), for the words from “information—” to the end substitute “ information in a Level 2 disclosure, and ”.
- (5) In section 12 (period and terms of appointment), in subsection (7)(a), for “8A or 8B of the 1997 Act” substitute “ 1 or 2 of the 2020 Act ”.
- (6) In section 14 (referral of information to independent reviewer)—
- (a) in subsection (1), in paragraph (a)—
    - (i) for “113B(4) of the 1997 Act” substitute “ 14(1) of the 2020 Act ”,
    - (ii) for “an enhanced criminal record certificate issued under section 113B(1) of that Act” substitute “ a Level 2 disclosure ”,
  - (b) in subsection (1), paragraph (b) is repealed,
  - (c) in subsection (2)—
    - (i) in paragraph (a), for the words from “described” to the end substitute “ of the disclosure, ”,
    - (ii) paragraph (b) is repealed,
    - (iii) in paragraph (c), for “enhanced criminal record certificate or, as the case may be, scheme record” substitute “ Level 2 disclosure ”.

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- (7) In section 16 (notification to applicant or scheme member), in subsection (2)(b), for “enhanced criminal record certificate or, as the case may be, scheme record” substitute “ Level 2 disclosure ”.
- (8) In section 18 (review of information referred under section 14)—
- (a) in subsection (1)—
    - (i) in paragraph (a), for the words from “in relation to” to the end substitute “ for the purpose of the disclosure, and ”,
    - (ii) in paragraph (b), for “that certificate” substitute “ the disclosure ”,
  - (b) after subsection (1) insert—
 

“(1A) Section 33 of the 2020 Act (Level 2 disclosure: considering relevance and whether to include certain information) applies for the purposes of subsection (1) of this section as it applies for the purposes of the sections mentioned in subsection (1) of that section, but as if—

    - (a) references to a conviction or a children's hearing outcome were omitted, and
    - (b) references to other information were references to information mentioned in section 14(1)(a) of this Act.”,
  - (c) subsection (2) is repealed,
  - (d) in subsection (4)(a), for “enhanced criminal record certificate or, as the case may be, scheme record” substitute “ Level 2 disclosure ”.
- (9) After section 20 insert—

**“20A Removal of information from scheme record following review or appeal**

- (1) This section applies where, in the case of a scheme member—
  - (a) information that is the subject of a review under section 18 is also contained in the scheme member's scheme record in relation to a type of regulated role to which the purpose of the disclosure referred to in section 18(1)(a) relates, and
  - (b) subsection (2) or (3) applies in relation to the review.
- (2) This subsection applies if the independent reviewer determines under section 18(4)(a) that the information ought not to be included in the disclosure and—
  - (a) no appeal under section 20 is taken, or
  - (b) such an appeal having been taken, the sheriff confirms the determination under section 20(3)(a).
- (3) This subsection applies if the sheriff, on an appeal under section 20, determines under subsection (3)(b) of that section that the information ought not to be included in the disclosure.
- (4) The Scottish Ministers must remove the information from the scheme member's scheme record so far as relating to the type of regulated role mentioned in subsection (1)(a).

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- (5) The information is to be treated for the purposes of the 2007 Act as not being vetting information.”.
- (10) In section 23 (regulation of procedure for review)—
- (a) in subsection (1), for “enhanced criminal record certificates and scheme records” substitute “ Level 2 disclosures ”,
  - (b) in subsection (2)(a), for “an enhanced criminal record certificate or, as the case may be, a scheme record” substitute “ a Level 2 disclosure ”.
- (11) Section 25 (amendments consequential on Chapter 2) is repealed.
- (12) In section 26 (interpretation of Part 2)—
- (a) the definitions of “1997 Act” and “enhanced criminal record certificate” are repealed,
  - (b) after the definition of “2007 Act” insert—

““2020 Act” means the Disclosure (Scotland) Act 2020,”
  - (c) in the definition of “applicant” for “113B of the 1997 Act for an enhanced criminal record certificate” substitute “ 11 of the 2020 Act for a Level 2 disclosure ”,
  - (d) after the definition of “independent reviewer” insert—

““Level 2 disclosure” means a Level 2 disclosure under section 8 of the 2020 Act,

“purpose of the disclosure”, in relation to a Level 2 disclosure, has the meaning given in section 69 of the 2020 Act,”.

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