

Delegated Powers and Law Reform Committee
Tuesday, 25th February 2025
7th Meeting, 2025 (Session 6)

Instrument Responses

Level 1 and Level 2 Disclosure Review Application (Scotland) Regulations 2025 (SSI 2025/26)

On Wednesday 12th February 2025, the Committee asked the Scottish Government:

1. Regulation 2 of the instrument prescribes the period (for the purposes of section 4(1) of the Disclosure (Scotland) Act 2020) within which an applicant may, having received a Level 1 disclosure by electronic communication, either (a) ask for it to be made available to a third party or (b) notify the Scottish Ministers that the applicant intends to make an application for the disclosure to be reviewed. Regulation 2 prescribes this period as being 10 working days beginning with the date on which the disclosure was provided to the applicant. Regulation 3 prescribes the period (for the purposes of section 5(1)) within which the applicant may make the actual application for review. Regulation 3 prescribes the same period as regulation 2: ten working days beginning with the date on which the disclosure was provided to the applicant. The periods are therefore concurrent.

Accordingly, an applicant who wants a review must both notify their intention to apply for a review and make the actual review application within the same 10 day period. Section 5(2) of the Act provides that the review application may only be made if notification of intention has already been made. Since the period is concurrent, an applicant in fact has less than the full 10 day period to notify their intention because that has to be done before the review application is made. Requiring an applicant to notify their intention appears to be redundant since the review application itself must in any event be made within the same period. No consequences seem to flow from notifying the intention, for example notification is not needed in order to prevent the Scottish Ministers from taking any action in the meantime.

Can confirmation be provided that making the periods concurrent fulfils the policy intention?

2. Regulation 5 concerns obtaining “non-conviction” information from relevant overseas police forces.
 - (a) Given that the term “non-conviction” is not defined, is its meaning commonly understood for the purposes of this instrument?
 - (b) Regulation 5 defines “relevant overseas police force” for the purposes of section 15(6) of the 2020 Act. This determines which overseas police forces the Scottish Ministers must request information from under section 15(1) for a

level 2 disclosure. Regulation 5 defines “relevant overseas police force” as being an overseas police force which has indicated in UK records that it holds non-conviction information relating to the individual, or which the Scottish Ministers have reason to believe holds non-conviction information. Can confirmation be given that information on actual convictions overseas will be available in another way, and therefore that provision for this is not required here?

3. Paragraph 1(2)(b) of the schedule requires the Scottish Ministers to give the independent reviewer “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)” (emphasis added). However, what is provided under section 15(1)(b) is a statement of the chief officer’s “belief” and “opinion”, rather than “decision”. Can confirmation be provided that paragraph 1(2)(b) is intended simply to identify the section 15(1)(b) statement, and do you consider that this provision is sufficiently clear despite the reference to a “decision”?

On Tuesday 18th February 2025, the Scottish Government responded:

1. The policy position is that the periods in sections 4 and 5 are to be concurrent and Disclosure Scotland colleagues are content that this works in operational terms.

Section 4 of the Disclosure Act applies only to Level 1 disclosures provided to the applicant using electronic communication. In practice, this is intended to be via a portal platform. Disclosure Scotland will control the sharing of electronic Level 1 disclosures. The Level 1 disclosure will first be made available to the individual via the portal and the individual will be asked by Disclosure Scotland whether they wish for their disclosure to be shared (electronically) with a specified third party, or whether they intend to apply for a review of the accuracy of the information in the disclosure. (Disclosure Scotland also expect that the individual will get an email prompt to log into their portal and take action in relation to their Level 1 disclosure with instructions on how to notify and apply for review and the timescales within which they must do so).

Level 1 disclosures may only ever be subject to an accuracy review. This is administrative in nature and replaces the ‘corrections process’ under section 117 of the Police Act 1997. It is limited to, for example, an error in the applicant’s name, address, date of birth and so can be stated by an individual relatively succinctly. Through experience (in relation to accuracy disputes under section 117 of the Police Act 1997) Disclosure Scotland colleagues anticipate that individuals making Level 1 disclosure applications electronically will likely view their disclosure and notify Disclosure Scotland that they wish for that disclosure to be shared or that they intend to make an application for review immediately after (or very soon after) receiving their prompt. Accordingly, in practical terms, 10 days from provision of disclosure is considered to be enough time for an individual to both notify of their preference (share or review) and make the accuracy review application.

Individuals who apply for Level 1 disclosures in paper format will receive a physical paper copy of their disclosure and so can share it / or not as they see fit with any third parties. Although the individual can still apply for a review of the accuracy of the disclosure, the section 4(1) (share or review) provision need not apply to those individuals as Disclosure Scotland is not in control of the onward sharing arrangements. These individuals have 10 days from provision of disclosure within which to make an application for a review.

Disclosure Scotland intends to provide clear guidance to all disclosure applicants about the review processes under the Disclosure Act (and in relation to using the online portal), which will set out what is required at each stage and why, along with the relevant timescales in which anything needs to be done.

2. (a) Yes, 'non-conviction information' is a commonly understood term for the purposes of the disclosure regime. The term has been used, without issue, in regulations made under the Police Act 1997 (see regulation 8 of [The Police Act 1997 \(Criminal Records\) \(Scotland\) Regulations 2010](#)) since 2010. This term will continue to be used in an entirely operational context when the Disclosure Act comes into force. When providing a Level 2 disclosure, Disclosure Scotland will check central records (defined in [The Level 1 and Level 2 Disclosure Information \(Scotland\) Regulations 2024](#)) when vetting an individual; if a marker (usually a flag or arrangement of words that indicates the existence of information about the individual) exists on those records in relation to the individual being vetted and that marker suggests that an overseas force holds information (other than convictions) then Disclosure will, under section 15 of the Disclosure Act, request such information before providing the Level 2 disclosure. A marker may be added to the central records by a UK force (about information it holds itself or about information it knows that another body holds) or by an overseas force directly.

(b) [ACRO Criminal Records Office](#) (hosted by Hampshire and Isle of Wight Constabulary) provides a range of policing related services for members of the public, international law enforcement organisations and non-police agencies. It is understood that ACRO manages the process for feeding any overseas convictions into central records in the UK. Accordingly, further provision about overseas convictions is not required here.

3. Yes, paragraph 1(2)(b) is intended to identify the section 15(1)(b) statement.

Paragraph 1(2)(b) of this instrument sets out what the Scottish Ministers must provide to the independent reviewer for the purposes of a review. Disclosure Scotland will perform this function on behalf of the Scottish Ministers.

In response to a request made by Disclosure Scotland under section 15(1) of the Disclosure Act, the chief officer of an overseas police force will be asked to, in effect, decide whether to provide information to Disclosure Scotland about an individual in accordance with the 'test' in subsection (a). If the chief officer believes information to be relevant to, and ought to be included in, a Level 2 disclosure, then the chief officer must provide both the information itself and reasons for deciding to provide it to Disclosure Scotland.

Upon receipt of information provided in response to a request under section 15(1), Disclosure Scotland must under paragraph 1(2) of the schedule of this instrument send both the information that the chief officer has decided to provide for inclusion in the Level 2 disclosure itself and a statement of the reasons for the chief officer's decision to do so, to independent reviewer. Accordingly, the Scottish Government considers paragraph 1(2)(b) of this instrument to be clear.

Cost of Living (Tenant Protection) (Saving Provision) (Scotland) Regulations 2025 (SSI 2025/29)

On Friday 14th February 2025, the Committee asked the Scottish Government:

The Policy Note suggests that regulation 2 of the instrument saves provisions for referrals and appeals where they were made before 1 April 2025. Regulation 2 applies the time limit of 1 April 2025 to referral proceedings in regulations 2(a) and (c) only. The time limit is not applied to the subsequent appeal procedures specified in regulations 2(b) and (d). Can you please confirm if the policy intention is to apply the 1 April 2025 time limit to referral proceedings only?

Please confirm whether any corrective action is proposed, and if so, what action and when.

On Wednesday 19th February 2025, the Scottish Government responded:

The policy intention is accurately reflected in the instrument, the 1 April 2025 time limit is only applied in connection to referral proceedings as set out in regulations 2(a) and (c). The 1 April 2025 time limit is not applied to subsequent appeal procedures specified in 2(b) and (d). We note that the policy note lacks clarity on this point due to the words "and appeals" in the first sentence under the heading "Policy objectives" and in terms of corrective action we undertake to publish an updated policy note to put this matter beyond doubt.