

Vetting Policy and Procedure

June 2012

1.

Introduction

On 28 February 2011, the Scottish Government introduced a new membership scheme to replace and improve upon the current disclosure arrangements for people who work with vulnerable groups.

The Protecting Vulnerable Groups Scheme (PVG Scheme) will:

- help to ensure that those who have regular contact with children and protected adults through paid and unpaid work do not have a known history of harmful behaviour.
- be quick and easy to use, reducing the need for PVG Scheme members to complete a detailed application form every time a disclosure check is required.
- strike a balance between proportionate protection and robust regulation and make it easier for employers to determine who they should check to protect their client group.

The PVG Scheme will be managed and delivered by Disclosure Scotland which, as an executive agency of the Scottish Government, will take on additional responsibilities. This will include taking decisions, on behalf of Scottish Ministers, about who should be barred from working with vulnerable groups.

The PVG Scheme replaces enhanced disclosure for individuals working with vulnerable groups.

The Protecting Vulnerable Groups (Scotland) Act 2007 introduces a new concept of 'regulated work'. Regulated work with children supersedes the definition of child care position in the Protection of Children (Scotland) Act 2003 ("POCSA") and regulated work with adults supersedes contact with an adult at risk. Section 2 explains the scope of regulated work and how to identify whether a particular activity or position involves regulated

work.

This vetting programme also extends to organisations with delegated authority from or support by the Council in the form of a grant or where organisations use Council premises for activities involving children.

2.

What is Regulated Work

2.1

It is not possible to provide a definitive list of roles, positions or types of employment that constitute regulated work, not least because the structure and descriptions of peoples' work is constantly changing. Instead, the PVG Act defines regulated work by reference to: the activities that a person does; the establishments in which a person works; the position that they hold; or the people for whom they have day to day supervision or management responsibility. There are two types of regulated work:

- regulated work with children; and
- regulated work with adults.

The reason for having two types of regulated work, and two corresponding lists of individuals who are unsuitable to do such work, is to allow for the fact that unsuitability to work with one group does not always go hand in hand with unsuitability to work with the other.

An individual may be doing both types of regulated work as part of the same job (e.g. doctor) or in different contexts (e.g. a teacher - doing regulated work with children - who volunteers with WRVS - doing regulated work with adults).

2.2

How to assess whether an individual is doing regulated work

There are five steps to assessing whether an individual is doing regulated work:

2.3

Is it work?

Work is defined at section 95 of the PVG Act and it has a very broad meaning as work of any kind. Work includes paid or unpaid work and other types of work. For the purposes of the PVG Scheme, being a foster carer is regarded as work. The carrying out of the functions of any statutory office is also work, as is caring for or supervising individuals who are participating in any organised activity.

2.4

Who are they working with?

The PVG Act provides for the protection of two vulnerable groups: children, and protected adults.

Child

A child as an individual aged under 18 years.

Protected adult

A protected adult is defined as an individual aged 16 or over who is provided with (and thus receives) a type of care, support or welfare service. This definition of protected adult supersedes the definition of “adult at risk” used for the purposes of eligibility for enhanced disclosure. To be classified as an adult at risk, an individual had to meet three criteria: having a condition, in consequence of which they had a disability and received a care service.

2.5

What do they do?

An individual may be doing regulated work with **children** if their work involves any of the following activities (as part of their normal duties):

- Caring for children.
- Teaching, instructing, training or supervising children.
- Being in sole charge of children (see below).
- Unsupervised contact with children under arrangements made by a responsible person (see below)
- Providing advice or guidance to a child or to particular children which relates to physical or emotional well-being, education or training (see below).
- Moderating a public electronic interactive communication service which is intended for use wholly or mainly by children (see below).
- Providing, or working for an organisation which provides, a care home service which is provided exclusively or mainly for children.
- Providing, or working for an organisation which provides, an independent health care service which is provided exclusively or mainly for children.
- Work on any part of day care premises at times when children are being looked after in that part.

An individual may be doing regulated work with **adults** if their work involves any of the following activities (as part of their normal duties):

- Caring for protected adults.
- Teaching, instructing, training or supervising protected adults.
- Being in sole charge of protected adults.
- Providing assistance, advice or guidance to a protected adult or particular protected adults which relates to physical or emotional well-being, education or training.
- Inspecting adult care services (including inspecting any premises used for the purposes of providing such services)

2.6

Is it their normal duties?

The concept of normal duties is extremely important in limiting the scope of regulated work. For an activity or work in an establishment to be regulated work, the carrying out of the activity or the work in the establishment must be part of the individual's normal duties.

Normal duties can be considered as something the individual might be expected to do as part of their post on an ongoing basis, for example appearing in a job description. Normal duties exclude one-off occurrences and unforeseeable events.

No particular frequency for undertaking the work or duration of work are specified in the act as these will depend on the context.

An activity or work is likely to be “normal duties” when:

- it appears in an individual's job description, task description or contract (but these should not be manipulated to stretch the boundary of the pvg scheme);
- it can reasonably be anticipated; or
- it occurs regularly.

An activity or work is unlikely to be “normal duties” when:

- done in response to an emergency (unless by an emergency worker);
- arranged at the last minute to stand in for sickness or other unexpected absence of another worker; or
- done as a one-off activity of short duration which is not part of the individual's normal routine or occupation.

Are there any exceptions which apply?

2.7

The scope of regulated work is narrowed by the incidental test. Some, but not all, activities with children or protected adults are excluded from being regulated work if the activity is occurring incidentally to working with individuals who are not children or protected adults. For example, a teacher in a school is doing regulated work with children but a college lecturer running woodwork classes in the evening aimed at adults is outside the scope of regulated work, even if one or two children attend his class. This is because the presence of children (and the teaching of children) is incidental to the main activity and purpose of the class which is to teach adults.

3. Vetting Procedures

3.1 Prospective Highland Council Employees

3.1.1 Recruitment and Selection

- Applicants for posts which require disclosure checks complete a different application form (Application Form B) which requires them to declare **any** previous convictions for criminal offences i.e. they are **not** entitled to withhold information about **any** previous conviction (including “spent” convictions). They are also required to declare:
 - any criminal proceedings still pending
 - whether they have committed any offences against children or been subject to any Civil proceedings where they were alleged to have committed offences against children under the age of 16.
 - in relation to childcare posts, whether they are on any list of adults disqualified from working with children.
- The fact that a person has a criminal record does not automatically make him/her unsuitable for work with children. The following factors would be taken into account in deciding the relevance of convictions:
 - the nature of the conviction
 - the nature of the appointment
 - when the offence(s) occurred
 - the frequency of offence
- It is essential that if a Service wishes to appoint an applicant with a criminal conviction that the appointment is approved by the Service Director (or nominated Senior Officer) in consultation with the Head of Personnel, or delegated officer **before** an offer of appointment is made. This should be recorded in the applicant’s personal file.
- Normally if an applicant does not declare any convictions and convictions are subsequently traced, he/she would **not** be appointed unless there is a sound justification for this.

- Existing employees working in regulated work will require to become scheme members, however this will be phased in between 2012 – 2015. If an employee moves post during this period they should become scheme members at this stage.
- Existing Council employees who apply for a post in a regulated work area are required to complete Application Form B, declare any previous convictions that they are not disqualified from working with children or protected adults. Existing employees should apply to become a scheme member as this stage. If they are employed in regular work for both Children and Protected Adults, they would apply once to join both schemes.
- Existing Council employees who are also Scheme Members and apply for another post which requires a Scheme Membership do not require to be rechecked. Under the new Membership Scheme re-checking will not be necessary as we will be provided with regular updates on Scheme Members.
- Existing Council employees who are Scheme Members but do not hold Scheme membership for the vulnerable group they will be working for, require to obtain scheme membership for this group also.
- External Applicants who are currently Scheme members will require only a Scheme Update, provided they are a Scheme member for the area of regulated work they are to be recruited to, ie Children or Protected Adults.
- If it is not possible to receive a Disclosure Scotland clearance for periods of time when candidates have worked or resided outwith the United Kingdom they must be asked specific questions about this period and in particular whether they had any criminal convictions during this time abroad. In addition if they have not listed a referee from abroad they must supply a character or employer reference to cover this period. No decision should be taken to appoint until approval is given by the Service Director in consultation with the Head of Personnel or delegated Officer.
- It is a condition of employment and is incorporated into contracts of employment that employees (who have been employed following a satisfactory Disclosure Scotland check or Scheme Membership) **must** notify the Council if they are either convicted of a criminal offence which may affect their suitability for their current post or referred onto a list for adults Disqualified from Working with Children or Protected Adults. Failure to disclose a relevant conviction or referral on to such a list will be classed as gross misconduct under the Council's Disciplinary Procedures.

Interviewing Prospective Employees

- when interviewing prospective employees, managers must ensure that the following checks are carried out :
 - (i) Explanations must be sought for any significant time gaps in employment history
 - (ii) All candidates must be asked if they have any criminal convictions or any criminal proceedings pending (even if they have made a negative declaration in their application form) or been subject to any civil proceedings where they are alleged to have committed offences against children.
 - (iii) All candidates must be advised that failure to disclose a relevant conviction will be classed as gross misconduct and will lead to dismissal
 - (iv) All candidates must be asked if they are or have been known by any other name(s)
 - (v) All candidates must be asked if they are on a Disqualified from Working with Children and/or Protected Adult list.
 - (vi) Nominated referees must be in accordance with the guidance notes provided to applicants i.e. one referee must be the present or immediate past employer at a senior level.
 - (vii) Explanations must be sought for any time gaps in previous addresses.

Prospective employees for positions which require a PVG Scheme Membership or Disclosure Check must not commence duties with the Council until confirmation has been received from Disclosure Scotland regarding whether or not criminal convictions, pending convictions or any other relevant Police information has been traced and confirmation that there is no listing on a Disqualified from Working with Children and/or Protected Adult List.

From the 28 February 2011 it is an offence to employ an individual who is Disqualified from Working with Children and/or Protected Adults unless the organisation did not know or could not reasonably be expected to know that the person concerned is listed.

Casual Employees

Casual employees who have already completed Disclosure Scotland checks but have not worked within a 12-week period, will be required to become a Scheme Member before accepting any further offer(s) of work. This is to ensure;

- there are no criminal conviction proceedings outstanding
- if there are any convictions or the individual has been on a

Disqualified from Working with Children or Protected adults list since the last police check was carried out, as these could have occurred during a period when the individual had not been carrying out casual work for the Council.

- that the individual has not been onto a Disqualified from Working with Children or Protected Adults List.

It is the managers responsibility for ensuring that the individual declares any relevant information that may affect their ability to continue to undertake casual work, where there has been a gap in this work of more than 12 weeks.

3.1.4

Non-Employees

Authorised Services staff will undertake disclosure checks for non-employees (e.g. volunteers, contractors, foster carers etc). The same process will be followed, as with employees, with the exception that information is not forwarded to Personnel to be counter-signed. The Service is responsible for counter-signing disclosure forms for all non-employees.

Prospective non-employees for positions which require a disclosure check or a membership of PVG Scheme must not commence duties with the Council until confirmation has been received from Disclosure Scotland regarding whether or not criminal convictions, pending convictions, or any other relevant Police information has been traced and confirmation that there is no listing on a Disqualified from Working with Children and/or Protected Adults list.

3.1.5

Organisations

Service Directors will require to be satisfied that any organisation has appropriate vetting procedures in place if it:-

- Is offered free use of Council premises or open spaces to undertake activities with children and/or protected adults,
- Is let premises, hard standing or parkland including sports fields for activities with children and/or protected adults.

All such organisations will be expected to adopt the Highland Child Protection Committee guidelines and to implement an appropriate Child Protection Policy and procedures in accordance with this guidance.

The Highland Council will require third parties and voluntary groups carrying out activities under the auspices of the Council or supported by the Council, by grant or use of Council premises, which involves significant or substantial contact with, or access to children and/or protected adults, to have in place procedures to record evidence that they have:

- Provided a full description of the activities proposed,

- A list of adults to be involved in co-ordinating and supervising activities,
- A complete personal profile on each person including the names and addresses of 2 referees who know them well and who have testified to their suitability for working with children, and that the appropriate reference checks (including verbal discussion) have taken place,
- Confirmed and checked the possession of appropriate qualifications.

The responsibility of monitoring conformance of the above requirements will lie with the relevant Service Director who will ensure that checks are carried out of the vetting records and procedures of a suitable sample of organisations on a regular basis.

Services should draw up a list of organisations and volunteers who are involved in organisations providing services for children and/or protected adults on behalf of the Council. It will be the responsibility of each Service to ensure its list of voluntary groups who have been vetted is kept up to date.

3.1.6

Volunteers

Volunteers who are involved in providing a service or support to children or protected adults must be appropriately vetted. The Council will only be responsible for checking volunteers who carry out work directly for the Council. Any other volunteer groups should be advised to contact Volunteer Development Scotland which is a separate body set up to undertake checks for volunteer groups and is fully funded by the Scottish Executive. Vetting may involve Services undertaking disclosure checks where work is deemed to be in regulated work, access is deemed to be substantial, or may involve ensuring that adequate supervision is provided. It is the responsibility of the Service Directors to ensure that volunteers are appropriately vetted.

3.1.7

Contract Staff

Service Directors and Contractors should identify all persons who are regarded as undertaking regulated work. Again, appropriate action must be taken to ensure that these groups are not put at risk. This will involve the Service carrying out a vetting procedure e.g. scheme membership (in the case of bus drivers or escorts) or may involve ensuring that adequate supervision is available from employees of a particular unit or establishment. Contractors, when they are working at units providing services to children e.g. in schools, should be made aware that their employees should not make contact with children, while Head Teachers and Managers of such facilities are responsible for ensuring that contractor's employees are adequately supervised.

4.

PVG/Disclosure Applications

Personnel Offices will continue to process applications on behalf of prospective employees and existing employees. This involves the Service issuing the relevant application form either the 'Application to Join the PVG Scheme', 'Existing PVG Scheme Member Application' or 'Disclosure form' (see Section 5 below) to the individual who has been given a provisional offer subject to a satisfactory scheme record/disclosure check. The Service should ensure the individual completes the form correctly (ie black/blue ink, block capitals, all relevant details provided and writing is contained within the boxes). The Service is also responsible for verifying proof of identity i.e. at least 3 forms of identification should be provided e.g. birth certificate, Passport, Driving Licence and where possible one should be photographic.

The form along with copies of proof of identity (signed by member of staff who saw the original I.D.) the individual's job application form, two references and medical questionnaire should then be forwarded by the Service to Personnel, or Designated Officer for counter-signing and processing.

5.

Level of Checks & Fees

Prospective employees, current employees or individuals who are in regulated work who are not already Scheme members should complete the Application to Join PVG Scheme and select the **Scheme Record** box when joining the Scheme.

Prospective Employees or individuals who are already PVG Scheme Members in the area of regulated work applied for should complete the Existing PVG Scheme Member Application form and select the **Scheme Record Update** box.

Prospective employees, current employees or individuals who are already PVG Scheme Members but not in the area of regulated work which they now wish to work in should complete the Existing PVG Scheme Member Application form and select the **Scheme Record** box

The cost of obtaining membership is £59. Scheme Record Updates will cost £18. In a small minority of cases there may be the requirement to upgrade a Scheme Record Update to a Scheme Record at an additional cost of £41 provided this is requested within 30 days of the Scheme Record Update being issued. There are two levels of fee (£59 / £18)

which apply to the PVG Scheme, the Council has agreed that it will pay for the cost of these fees.

There will still be a requirement for the following Disclosures where employees require to be disclosed but are not working in 'regulated work', eg Exchequer Assistants and Countersignatures.

Disclosure levels are as follows:

Basic Disclosure – this is related to an individual on their request, subject to confirmation of identity. This contains details of “unspent” convictions as defined in the Rehabilitation of Offenders Act 1974, (Exclusions and Exceptions) (Scotland) Order 2003 or will state that there are no such convictions.

Standard Disclosure – contains details of any spent or unspent convictions, warnings or written reprimands for positions exempt under the Rehabilitation of Offenders Act. It will also reveal if no such matters are on record.

Enhanced Disclosure –The enhanced disclosure contains the same details as the standard, however, in addition, it may also contain non-conviction information from local Police records (i.e. Police Intelligence) that a Chief Constable considers relevant in connection with the position being sought.

The disclosure checks are used to complement the Council's existing recruitment procedures and will only be processed following a provisional offer of employment or provisional offer for a voluntary position within the Council.

Further guidance on disclosure checks for employees should be referred to the appropriate Personnel Adviser while checks for non-employees should be directed to the appropriate Head of Service.