

1.0 INTRODUCTION

Protecting Vulnerable Groups Scheme

The new Protecting Vulnerable Groups membership scheme replaces disclosure arrangements for people who work with vulnerable groups. The scheme went live on 28 February 2011. The PVG Scheme, which delivers on the provisions outlined in the Protection of Vulnerable Groups (PVG) (Scotland) Act 2007 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 is Scotland's response to the principal recommendation of the Bichard Enquiry Report, which called for a registration system for all those who work with children and vulnerable adults in the UK that would confirm that there is no known reason why an individual should not work with these client groups.

The PVG Scheme will be managed and delivered by Disclosure Scotland. This will include taking decisions, on behalf of Scottish Ministers, about who should be barred from working with vulnerable groups.

Police Act Disclosures

The new PVG membership scheme, will replace the current disclosure arrangements for people who work with vulnerable groups, but it is important to point out, that the 3 types of disclosures under the Police Act 1997, will still be available for positions not within the scope of the PVG Scheme.

- Basic disclosure continues to be available for any purpose.
- Standard disclosure continues to be available as before, for example for, solicitors and accountants.
- Enhanced disclosure continues to be available for those posts unrelated to work with vulnerable groups, for example certain gaming and lottery licences, and other appointments involving access to children or protected adults other than through regulated work.

2.0 BACKGROUND

The Act introduces a membership scheme for people undertaking regulated work with children and/or protected adults to join. The new scheme will have a Sport Aberdeen memory and individual records held by the scheme will be updated automatically when a person's circumstances change. When a disclosure is required because the scheme member is changing posts or taking on an additional role, prospective employers can check whether he/she is a member of the scheme and whether there is any information held about them. The PVG Scheme aims to improve protection for adults, and for the first time in Scotland, there will be a list of those who are barred from working with protected adults. Scheme membership will be phased in for the existing workforce using a managed process of retrospective checking which will commence one year after the go-live date of 28 February 2011, and last for a three year period.

3.0 REGULATED WORK – POLICY DIRECTION

The Scottish Government cannot provide an absolute and definitive list of positions that constitute regulated work, as the roles and duties that people undertake vary widely between employers and change over time. Determining whether or not an individual is doing regulated work, and what type, is an essential prerequisite before any PVG Scheme application can be made. This is covered in the '**Protecting Vulnerable Groups Scheme Guidance for individuals, organisations and personal employers**', and is available at <http://www.disclosurescotland.co.uk/>

Listed below are basic definitions of what is meant by 'Regulated Work':

3.1 Regulated work with Children

This is generally any work, which involves responsibility for the welfare of a child. This can be through providing a service directly to children, through the type of establishment where regulated work takes place - such as a school.

3.2 Regulated work with Protected Adults

A 'protected adult' is a service based definition and avoids labelling adults solely on the basis of having a specific condition or disability. A 'protected adult' is an individual aged 16 or over who is in receipt of a type of care, support or welfare service. Defining adults in this way is intended to help employers identify the services that make an adult 'protected' and therefore, assess which posts constitute regulated work.

4 SCHEME RECORD DISCLOSURE

Under the PVG scheme, conviction and police information will appear on a Scheme Record Disclosure, and Disclosure Scotland will make an assessment, and give employers the reassurance that the individual is not unsuitable for that type of work, even if the disclosure contains convictions and/or other police information.

What scheme membership means

Just because an individual is a PVG Scheme member, does not necessarily mean that the individual is suitable to work in a specific position. That decision must be taken by us as an employer, informed by the content of their Scheme Record as well as other good recruitment and employment practice.

Information on a Scheme Record

A Scheme Record is issued to the individual and the registered body, and contains conviction and police information. If an individual who is barred applies to join the PVG Scheme, they will not get a Scheme Record but the individual and organisation will be advised by letter that the individual is barred from doing that type of regulated work.

Types of scheme record available

When a person applies to join the PVG Scheme for the first time, there are two types of disclosure record available:

- the **Scheme Record** at the request of an organisation; or
- the **Scheme Membership Statement** at the request of a personal employer or by the individual alone in anticipation of doing regulated work in the future.

The **Scheme Record** is the replacement for enhanced disclosures for work with vulnerable groups. It is designed for use when:

- asking an individual who does regulated work, or
- is being recruited to do regulated work, to join the PVG Scheme for the first time, or
- where a Scheme Record Update reveals a change to vetting information, and as an employer we choose to follow that up.

The **Scheme Membership Statement** is designed for personal employers asking an individual to do regulated work for them or for pre-emptive use by individuals who intend to do regulated work at some point in the future. It does not contain vetting information.

A **Scheme Record Update** is designed for use when asking an individual who does, or is being recruited to do, regulated work for them to join the PVG Scheme for the first time (or where a Scheme Record Update reveals a change to vetting information) for a pre-existing Scheme Member. If the Update shows that vetting information has been recorded a decision will need to be taken to follow up any new vetting information relating to an employee, for a fee. This is covered in the '**Protecting Vulnerable Groups Scheme Guidance for individuals, organisations and personal employers**', and is available at <http://www.disclosurescotland.co.uk/>

5 FEES

Applications to join the PVG Scheme or PVG Scheme Record Request

Applications to join the PVG Scheme for the first time or for a PVG Scheme Record (the full record) will cost £59 (currently). Preferred Candidates will require to be a member, or in the first year of the new scheme, agree to become members and in doing so be responsible for the cost of the fee £59 (currently).

PVG Scheme Record Updates

Once a person becomes a PVG Scheme member the fee will be £18 (currently), for an employer requesting a '**Scheme Record Update**' **PVG Scheme Record Disclosure**. If a **PVG Scheme Record Update** shows that new vetting information has been recorded, an

employer may wish to request a full PVG Scheme Record Disclosure in order to see the detail. This will cost a further £41 (currently).

6 ADMINISTRATIVE FUNCTIONALITY

The Disclosure Scotland system has no memory, therefore an employer has to process every application from scratch because a full identify verification and a fresh check for criminal history information is required by Disclosure Scotland every time. The PVG Scheme however will have a memory, therefore after a person becomes a member, only one page of personal information will be required on the application form to enable Disclosure Scotland to process any future checks.

In addition, about one year after commencement, the online account facility will enable organisations to process all applications via a secure online portal and PVG Scheme Record Updates will be issued within minutes of the application being made. It will also be possible to view financial statements online and receive and process invoices electronically.

7 VETTING AND BARRING PROCESS

People who work, on a regular basis, with vulnerable groups will join the PVG Scheme and, from then on, their membership records will be automatically assessed and updated by Disclosure Scotland, if any new vetting information arises. If an individual becomes unsuitable they will be removed from the scheme and listed on one or both lists, and will be prevented from entering, or removed from the workforce. Disclosure Scotland operates an appeals procedure, for anyone who wishes to challenge a barring decision.

8 SAFE RECRUITMENT PRACTICE

The PVG Scheme provides Sport Aberdeen with a means of satisfying itself that those doing paid or unpaid regulated work for it are not barred from doing so. If vetting information exists, this will appear only on the Scheme Record, and might prove helpful when deciding whether an individual is suitable for the specific work being offered. Given that the individual is the scheme member, scheme membership forms part of the essential criteria, and that candidates at interview, must evidence that they are scheme members. The fact that they are not barred and that vetting information has been checked does not necessarily make them the best candidate, or even suitable for the post. It is important to also carry out proper recruitment checking of skills and qualifications and obtain references to ensure that information contained in an application form is verified by previous employers. The decision to offer regulated work should be determined by all of these factors. Information about safe recruitment practice is available on the

http://www.disclosurescotland.co.uk/guidance/infoforindivid/chap2_regulatedwork/2_5_step_3_regworkadults.html

9 PERSONAL EMPLOYERS

The PVG Scheme will also strengthen protection for vulnerable groups in instances where people are employed on a personal basis. Personal employers - such as a parent who employs a sports coach for their child or a person employing a personal carer - will be able to check that a person is a PVG Scheme Member.

10 REFERRING INDIVIDUALS TO DISCLOSURE SCOTLAND

Sport Aberdeen will be able to make a referral to Disclosure Scotland if there are concerns that an individual has behaved in a harmful way towards vulnerable groups.

11 GENERAL INFORMATION – FORMS AND GUIDANCE Disclosure Scotland has produced an on line '**Regulated Work Self Assessment Tool**', which can be used to assess if a post meets the criteria for regulated work. It can be found at http://www.disclosurescotland.co.uk/pvg/training_guid.htm

Disclosure Scotland has also produced an on line **e-learning module** to help individuals and organisations prepare for and operate the new scheme. It can be found at http://www.disclosurescotland.co.uk/pvg/training_guid.htm The Scottish Government have published a list of **Frequently Asked Questions**. These can be found at <http://www.scotland.gov.uk/Topics/People/Young-People/childrenfamilies/pvglegislation/FAQs> General information is also available on line at: <http://www.scotland.gov.uk/Topics/People/Young-People/childrenfamilies/pvglegislation>

Samples of the new PVG Scheme Application Forms, PVG Registration Forms and the new Police Act Application Form and Guidance Notes for all of the new forms are now available to view at:

<http://www.disclosurescotland.co.uk/>

12 ANNUAL REVIEW OF POSTS

Sport Aberdeen are committed to an annual review to confirm those posts that require the post-holder to undertake 'regulated work' and thus be a member of the PVG Scheme, following a risk assessment. The on line '**Regulated Work Self Assessment Tool**', can be used to assess if a post meets the criteria for regulated work. It can be found at http://www.disclosurescotland.co.uk/pvg/training_guid.htm

Human Resources will maintain a list of posts that require to be checked and undertake an annual review of the list to take account of change of duties and the working locations of posts.

13 REHABILITATION OF OFFENDERS ACT 1974

This is a specific piece of legislation affecting ex-offenders, which affords them equality of opportunity when seeking employment. Under certain circumstances, once a period of time has elapsed from the date of conviction, their conviction is said to be **spent** and for the purposes of employment can be treated as though it never existed. This means that if the ex-offender is asked, on an application form or at interview, if they have a criminal record, they can answer no to this question if the convictions are **spent**. However, there are **exceptions** to this, by virtue of the **Exclusions and Exceptions (Scotland) Order 2003 (The Order)**.

13.1 Exclusions and Exceptions (Scotland) Order 2003

Various kinds of employment, occupations and professions are exempted from The Rehabilitation of Offenders Act 1974, by virtue of the **Exclusions and Exceptions (Scotland) Order 2003 (The Order)**. These include occupations that fall into “at risk” categories, and certain profession and offices. The Order can be found at:

<http://www.opsi.gov.uk/legislation/scotland/ssi2003/20030231>

The Order overrules all the rights an ex-offender would otherwise have in respect of their **spent** convictions. If a post is exempt from The Order, it allows a prospective employer, the right to ask for details of both **spent** and **unspent** convictions, but does not necessarily debar ex-offenders from these jobs.

13.2 Assessing the post under the 1974 Act

A manager must ensure that all posts within their remit are properly assessed, against the 1974 Act:

- The service identifies posts covered by the Rehabilitation of Offenders Act.
- When recruiting to these **excepted** posts, the recruitment pack should contain the relevant Rehabilitation of Offenders Act declaration form.

13.3 Candidates for Interview

Applicants who are an ex-offender should be assessed on his/her ability to perform in the job in question and that their convictions should only be taken in to account **if they are relevant to the job**. At interview, it is appropriate to ask candidates being interviewed for **excepted** posts, the prescribed question, i.e. details of all convictions, spent or otherwise or any pending court appearances. At interview, candidates for **non-excepted** posts can only be asked if they have any unspent convictions or outstanding court appearances. The Rehabilitation of Offenders declaration form should be checked for the preferred candidate, one to view the details and two ensure the answer to the question at interview mirrors the contents of the declaration form.

14 POLICE ACT DISCLOSURES

The disclosure system stems from the **Police Act 1997, Part V**, and covers those posts that are not caught by the PVG Scheme. A Disclosure contains criminal history information which can be used by employers to make safer recruitment decisions. There are three types of Disclosure:

Basic Disclosure (Criminal Conviction Certificate)

A Basic Disclosure contains details of convictions **unspent**, under the Rehabilitation of Offenders Act 1974. It is not job specific or job related, and is available to anyone for any purpose. It is normally only issued to the applicant, but can be done c/o of Sport Aberdeen, with the approval of the applicant.

This may be used as a minimum check for posts which are not caught by the PVG scheme, or where the legislation does not allow a Standard disclosure. A Basic Disclosure form is available on line at:

http://www.disclosurescotland.co.uk/disclosureOnline/BDO_Instr.htm

Standard Disclosure (Criminal Record Certificate)

Standard Disclosures are available for those applying for positions listed in the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003, and contains all conviction information, **spent** and **unspent**, including cautions. The Order can be found at

<http://www.opsi.gov.uk/legislation/scotland/ssi2003/20030231>.

Enhanced Disclosure (Enhanced Criminal Record Certificate)

An Enhanced Disclosure is for people (not employees) involved in child care including child minding, day care and foster parents. Information on enhanced disclosures and the relevant application form is available at:

<http://www.disclosurescotland.co.uk/apply/employers/standard-enhanced/>.

15 PREFERRED CANDIDATE FOLLOWING INTERVIEW

When the 'Preferred Candidate' has been identified, a Scheme Record, or a Disclosure check, for those posts not covered by the Scheme, may be required, depending on the post they are being considered for.

16 ACTION ON RECEIPT OF A SCHEME RECORD OR DISCLOSURE CHECK

- Once the recruiting manager receives a Scheme Record or a Disclosure check, he/she should make a final judgement on the appointment to the post.
- It will not be appropriate for Disclosure Scotland to determine whether or not a particular conviction or pending case is relevant in the circumstances of the individual concerned.
- Where the information provided by Disclosure Scotland is not consistent with that provided by a candidate or existing employee, he/she should be contacted and asked for an explanation. Where the person believes the information to be incorrect, they can raise a dispute with Disclosure Scotland.
- If the individual concerned admits failing to disclose a previous conviction or where the disclosure confirms a previously disputed conviction record, the seriousness of the failure to disclose and the continued suitability of the prospective employee or existing employee will need to be investigated and assessed thoroughly.
- The disclosure outcome details i.e. proceed or do not proceed should be entered on the recruitment assessment form by the recruiting manager.
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17 PROFESSIONAL REGISTRATION

A worker who is required to be a PVG member as part of their registering with their respective governing body, e.g. GTC, SSSC, will be checked by the governing body solely in relation to the registration process. It is a separate process from the check carried out by Sport Aberdeen as an employer or prospective employer. **However, as part of the interview process, candidates must provide evidence of their registration with the relevant professional body, if it is a requirement of the job.**

18 REVIEW

This Protocol will be reviewed within 3 years. It will nevertheless, be subject to continual review and amendment in light of experience of its operation, employment best practice and statutory requirements.

POLICY ON THE SECURE HANDLING, USE, STORAGE AND RETENTION OF DISCLOSURE SCOTLAND INFORMATION

Introduction

Disclosure Scotland, provide Disclosure information under Part V of the Police Act. It has the purpose of enabling employers to assess the suitability of prospective employees and volunteers for particular posts and to make safer recruitment decisions in relation to positions of trust i.e. working with children or adults at risk, by widening access to criminal record information.

The Act provides for the issue of criminal record history information in three different categories, namely basic, standard and enhanced disclosures. These disclosures are issued by Disclosure Scotland.

POLICY STATEMENT

General Principles

Sport Aberdeen complies fully with the Code of Practice, issued by Scottish Ministers, regarding the correct handling, holding and destroying of Disclosure information provided by Disclosure Scotland under Part V of the Police Act 1997 ("the 1997 Act"), for the purposes of assessing applicants' suitability for employment purposes, voluntary positions, licensing and other relevant purposes. It also complies fully with the Data Protection Act 1998 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure Scotland information. This policy is available to anyone who wishes to see it on request.

Usage

We use Disclosure information only for the purpose for which it has been provided. The information provided by an individual for a position within Sport Aberdeen is not used or disclosed in a manner incompatible with the purpose. We process personal data only with the express consent of the individual. We notify the individual of any non-obvious use of the data, including further disclosure to a third party, identifying the Data Controller, the purpose for the processing, and any further relevant information.

Handling

Sport Aberdeen recognises that, under section 1242 of the 1997 Act, it is a criminal offence to disclose Disclosure information to any unauthorised person. We, therefore, only pass Disclosure information to those who are authorised to see it in the course of their duties. Sport Aberdeen will not disclose information provided under subsection 113(B) (5)3 of the 1997 Act namely information which is not included in the Disclosure, to the applicant. Disclosure information will only be passed to those who are authorised to see it in the course of their duties:

- (a) a member, officer or employee of the registered body,
- (b) a member, officer or employee of a body whose request the registered body countersigned the relevant application, or
- (c) an individual at whose request the registered body countersigned the relevant application.

Information provided under section 115(8) of the Act, namely additional information provided by Chief Constables in Enhanced Disclosures, will not be disclosed to the individual who is the subject of the Disclosure. If specifically requested to disclose such information, for example if a subject access request is made in terms of section 7 of the Data Protection Act 1998, the Council will obtain the written permission of the Chief Constable who provided the information prior to considering whether Sport Aberdeen is obliged to disclose the information.

Access and Storage

We do not keep Disclosure information on an individual's personal file. It is kept securely, in lockable, non-portable storage containers. Access to storage units is strictly controlled to authorised and named individuals, who are entitled to see such information in the course of their duties.

Retention

We do not keep Disclosures or Disclosure information for any longer than is required after recruitment (or any other relevant) decision has been taken. In general, this is no longer than 90 days. This is to allow for the resolution of any disputes or complaints. Disclosure information will only be retained for longer than this period in exceptional circumstances which justify retention for a longer period. The same conditions relating to secure storage and access will apply during any such period.

Disposal

Once the retention period has elapsed, we will ensure that Disclosure information is immediately destroyed in a secure manner i.e. by shredding, pulping or burning. Sport Aberdeen will ensure that Disclosure information which is awaiting destruction will not be kept in any insecure receptacle (e.g. a waste bin or confidential waste sack). We will not retain any image or photocopy or any other form of the Disclosure information. We will, however, keep a record of the date of issue of the Disclosure, the name of the subject, the Disclosure type, the position for which the Disclosure was requested, the unique reference number of the Disclosure and details of the recruitment decision taken.