

Additional Protecting Vulnerable Groups Guidance

Introduction

PVG Disclosure certificates available

Application Forms

Continuous Updating

**Changes to Scotland's Disclosure
Regime – 10 September 2015**

INTRODUCTION

In February 2011, the Scottish Government introduced a membership scheme to improve disclosure arrangements for people who work with vulnerable groups, the PVG scheme:-

- helps 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.
- is quicker and easier to use, reducing the need for PVG Scheme members to complete the full detailed application form every time a disclosure check is required.
- strikes 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.

Definition of PVG scheme

Anyone doing regulated work or intending to do regulated work with children or protected adults, as defined under the 2007 Act, is required by the Council to apply for PVG Scheme membership.

‘Regulated work’ is the term used by the 2007 Act to define the types of work which barred individuals must not do, and for which PVG Scheme membership is available.

There are two types of regulated work:

- Work with children (a child is a person under 18 years of age); and
- Work with protected adults (that is a person aged 16 or over in receipt of certain care, welfare or community care services).

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 people’s work regularly changes.

Instead, the 2007 Act defines regulated work by reference to: the particular activities that a person does; the specific establishment in which a person works; the particular position of trust or responsibility that they hold; or the people for whom they have day to day supervision or management responsibility.

Further information on whether posts require membership of the Scheme (including an online self-assessment) is available from Disclosure Scotland on the following link: http://www.disclosurescotland.co.uk/disclosureinformation/pvg_training/self-assessment/index.html

The 2007 Act introduced lists of individuals barred from working with children or protected adults in ‘regulated work’ as defined within the 2007 Act. It is illegal for a person to undertake or to apply to do regulated work of the type from which they are barred, and it is illegal for an organisation to employ them in such a capacity.

The only way for a person to prove that they are not barred is to become a member of the PVG Scheme, and therefore the only way for The Council to satisfy themselves that an individual is not barred from one or both types of regulated work is by asking for evidence of PVG Scheme membership. By counter-signing an application for PVG membership or for a PVG check the organisation becomes an interested party. This means Disclosure Scotland will inform the organisation if the person subsequently becomes barred.

Under the 2007 Act, the decision about whether a person is unsuitable to be a member of the PVG Scheme will be made by Disclosure Scotland (who check all applications for regulated work with children and/or protected adults against the lists held by Scottish Ministers and the equivalent lists held in England & Wales and Northern Ireland).

Whilst an individual may be lawfully engaged in regulated work on the basis of PVG Scheme membership, the Council will also need to consider any additional vetting information contained within their PVG disclosure record, which may otherwise be relevant to the specific role itself (for example, conviction for theft where the individual will be unsupervised and working in a vulnerable person's home), when reaching a recruitment decision.

To access Disclosure Scotland's Frequently Asked Questions click on the following link:- <http://www.disclosurescotland.co.uk/faq/index.htm>

PVG DISCLOSURE CERTIFICATES AVAILABLE

Scheme Record

The Scheme Record is designed for use by organisations 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. The organisation must be a registered body with Disclosure Scotland or use an umbrella body to act as a registered body on their behalf.

The Scheme Record is also available for an existing PVG scheme member when:

- The member is only in the Scheme for one workforce (i.e. one of the two types of regulated work) and is seeking to do regulated work in the other workforce (the other type of regulated work);
- The member has not previously had a Scheme Record disclosed (i.e. where they have only been issued with a Scheme Membership Statement i.e. to work with a personal employer);

The Scheme Record shows basic membership information (common to all three types of disclosure record):

- The type(s) of regulated work in respect of which the individual is a PVG Scheme member (thereby confirming that the individual is not barred from regulated work of that type); and

- If the individual is under consideration for listing for the type(s) of regulated work, states that fact.

The Scheme Record also includes any vetting information that exists in relation to the individual. Vetting information is:

- Unspent convictions for any offence, spent convictions for certain offences (that is an offence in schedule 8A of the 1997 Act), spent convictions for certain offences (an offence in Schedule 8B of the 1997 Act) where the conviction has not yet become a protected conviction and unspent cautions held on central records in the UK;
- Whether the individual is included on the sex offenders register;
- Other relevant information provided by police forces; and
- Prescribed civil orders

Short Scheme Record

The Short Scheme Record can be used by organisations when asking an individual who is already a PVG Scheme member (and who has had a Scheme Record issued in the past, whether or not as a request from that same organisation, for the same workforce) **to do regulated work for them**. The organisation must be a registered body with Disclosure Scotland or use an umbrella body to act as a registered body on their behalf.

The Short Scheme Record shows basic membership information, plus the following:

- The types of regulated work in respect of which the individual is a PVG scheme member (thereby confirming the person is not barred)
- If the individual is under consideration for listing for the type(s) of regulated work
- A statement that there is no vetting information held about the person

If vetting information requires to be disclosed, a Scheme Record will be provided.

Scheme Membership Statement

Registered bodies should not normally request this type of disclosure as it is used when an individual is joining the PVG scheme to work with a personal employer. If an individual provides a Scheme Membership Statement, a Short Scheme Record should be requested to ensure the employer obtains all relevant vetting information.

APPLICATION FORMS

General forms

Disclosure Registration Application This form is used when setting up a registered body (The Council) and needs a registered person (Head of HR) who is Disclosure Scotland's primary point of contact within that organisation.

Disclosure Registration Modification This form is used to modify the registered person or counter signatory details, to remove a registered person or counter signatory or to modify other registration details.

Sub Account Application This form is used to set up separate invoicing facilities for different areas within the Council therefore allowing Disclosure Scotland to allocate the cost of applications to different accounts.

Police Act Disclosure Application – This form is used to apply for Disclosure checks.

PVG forms

Applicants who are not already Scheme members should complete the Application to Join PVG Scheme and select the **Scheme Record** box when joining the Scheme.

Applicants 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. This will provide a Short Scheme Record.

Applicants, 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 (protected adults or children) should complete the Existing PVG Scheme Member Application form and select the **Scheme Record** box

Service invoicing numbers

Each Service has a unique invoice number to ensure that the fees from Disclosure Scotland are allocated accurately. The following codes are required to be used in the registered body code section of the PVG application form:

THE378-001 – Recruitment Hub West (Corporate Development)

THE378-002 – Recruitment Hub North (Community Services)

THE378-003 – Transport Hub

THE378-004 – Recruitment Hub HQ (Finance and Development & Infrastructure)

CONTINUOUS UPDATING

Disclosure Scotland will keep the individual's PVG Scheme Record up-to-date. If Disclosure Scotland determines that a PVG Scheme member may have become unsuitable to do regulated work then the person will be placed under consideration for listing. Any organisation that Disclosure Scotland knows that the scheme member is doing regulated work for (an interested party) will be notified of that change in status and of the outcome of the consideration.

If an individual leaves the Council and is a member of the PVG scheme, Disclosure Scotland will need to be informed, by the Council, to update their records as the Council are no longer an interested party.

Continuous updating does not mean that an interested party will automatically be informed if there is new vetting information about the person. The police have discretionary powers to inform an employer if they have new information about an employee. An employer is likely to find out if a person is arrested or convicted of a serious offence, not least through non-attendance at work. However, the only way the Council can be certain that they have seen up to date vetting information is to request a new PVG certificate.

CHANGES TO SCOTLAND'S DISCLOSURE REGIME (10 SEPTEMBER 2015)

Background

Until the changes made to the law on 10 September 2015, higher level disclosures contained all spent convictions regardless of the nature and age of the conviction or the penalty imposed.

The operation of the Protecting Vulnerable Groups Scheme also meant that all previous criminal conviction information could be used in deciding when it may be appropriate to consider an individual for listing in the children's list, the adult's list or both lists.

The changes from 10th September 2015

Scottish Ministers want to strike a balance between protection of the public and vulnerable groups and the rights of individuals not to have to disclose routinely certain spent convictions.

Public protection remains at the forefront of the system of Standard, Enhanced and PVG Scheme Record Disclosures by ensuring certain very serious spent convictions will always be disclosed.

However, these reforms will allow those with minor criminal convictions to put their past offending behaviour behind them, supporting them to become productive members of society.

This change only has an impact on Standard Disclosures, Enhanced Disclosures and PVG Scheme Record Disclosures and has **no impact** on Basic Disclosures.

If an individual has never been convicted of or cautioned for an offence the changes will have no impact.

If in the past an individual has been convicted of or cautioned for an offence, then the changes may have an impact if the criminal record contains spent convictions.

What conviction information must always be disclosed?

The law requires the following always to be disclosed –

- any unspent convictions, and
- any spent convictions contained in a list of offences that must always be disclosed.

Disclosure Scotland will continue to disclose all unspent convictions in Standard, Enhanced and PVG Scheme Record Disclosures.

In addition, Disclosure Scotland will always disclose spent convictions for any offences on the list of [‘Offences which must always be disclosed’](#).

Disclosure Scotland will apply the rules contained in the legislation to convictions for offences on the list of [‘Offences which are to be disclosed subject to rules’](#). A spent conviction on this list will only be disclosed if it is not a “protected conviction”.

Spent convictions that are not on either of these lists will not be disclosed.

A **protected conviction** is a spent conviction for an offence–

- which is received more than 15 years ago (if over 18 on the date of the conviction) or
- which is received more than 7 years and 6 months ago (if under 18 on the date of the conviction) or
- which receives the disposal of an admonition, absolute discharge or a discharge following a referral to a children’s hearing.

Examples

A person is convicted of rape. This will always be eligible for disclosure under the amended system. All unspent convictions are disclosed and when the rape becomes a spent conviction, it is on the list of offences that will always be disclosed.

A person is convicted of theft and is admonished. Once the conviction is spent under the terms of the Rehabilitation of Offenders Act 1974, it will not be disclosed

under the amended system. It becomes a protected conviction immediately when spent.

A person, aged 20, is convicted of theft and is sentenced to 6 months in custody. Once the conviction is spent under the terms of the Rehabilitation of Offenders Act 1974, it will continue to be disclosed until more than 15 years have passed since the conviction. After that time it will become a protected conviction and no longer be disclosed.

A person is convicted of theft when aged 16 and fined. Once the conviction is spent under the terms of the Rehabilitation of Offenders Act 1974, this will continue to be disclosed until more than 7 years and 6 months has passed since the conviction. After this time, it will become a protected conviction and will no longer be eligible for disclosure.

Application to a Sheriff to remove a conviction

Where Disclosure Scotland does not disclose any spent conviction information on a higher level disclosure it will issue the disclosure to the counter-signatory at the same time as to the applicant. **This is similar to the practice before the 2015 Order came into force.**

If there are spent convictions on a disclosure in relation to offences listed on the [Offences which are to be disclosed subject to rules](#) ('rules list'), the counter-signatory's copy of the disclosure will be retained by Disclosure Scotland for ten working days from the date on the disclosure. 'Working days' are Monday to Friday.

The applicant has a right to apply to a sheriff to seek to have spent conviction information removed. The sheriff can order for information to be removed only where he or she thinks that the conviction information is not relevant to the purpose for which the disclosure was requested.

If the applicant does not contact Disclosure Scotland within the **10 working days** to advise that they intend to submit an application to a Sheriff for an order to have certain spent conviction information removed from a disclosure, Disclosure Scotland will send out the counter-signatory's copy of the disclosure no sooner than 11 working days after the date on the disclosure.

If however, the applicant is satisfied with the content of their disclosure and they wish the counter-signatory's copy to be issued within the 10 working days, they can email HLC.Release@disclosurescotland.gsi.gov.uk and the copy of the disclosure will be issued.

Where Disclosure Scotland discloses spent convictions for offences on the 'rules list' and the applicant informs the Council that they intend to apply to a Sheriff for an order to have certain spent convictions removed from the disclosure, the application to a Sheriff must be made **within 3 Months**. Where an applicant **decides not** to go ahead with the application to a Sheriff, the disclosure

application will be closed and the counter-signatory's copy of the disclosure will not be sent out. If the applicant still needs a disclosure to go to the counter-signatory they will have to make a new application and pay the required fee again.

Where an application to the Sheriff is made, when the case is decided by the Sheriff Disclosure Scotland will issue a new disclosure to the applicant taking into account whether or not the Sheriff has ordered information to be removed. The applicant will be given a further opportunity (again 10 working days from the date on the disclosure) to consider their disclosure or scheme record before a copy is sent to the counter-signatory.

Summary of the key changes to Standard and Enhanced disclosures and PVG scheme records (called "higher" level disclosures) are:

- certain spent convictions will continue always to be disclosed due to the serious nature of the offence;
- rules will be applied to certain spent convictions to determine the content of spent conviction information on higher level disclosures;
- spent cautions (within the meaning given in schedule 3 of the Rehabilitation of Offenders Act 1974) will not be disclosed;
- individuals who have a spent conviction for certain offences which has not yet reached the point at which the rules would prevent disclosure of the conviction can indicate to Disclosure Scotland that they intend to make an application to a Sheriff for an order to have certain spent conviction information removed from a higher level disclosure;
- where an application to a Sheriff is made, the issue of a higher level disclosure to the person who countersigned the disclosure application or request will not take place until the Sheriff has made a determination on the application;