

Chapter 1: Introducing the PVG Scheme

1. The PVG Scheme is established by the Protection of Vulnerable Groups (Scotland) Act 2007 (“the PVG Act”). This guidance explains what the PVG Scheme is for, how it should be used, the information it collects and provides and how it operates. This guidance is issued by the Scottish Government under section 84 of the PVG Act to assist individuals and organisations to implement the legislation. It may be necessary to refer to the PVG Act and secondary legislation for more information; all legal rights and obligations are contained in the legislation and the guidance is an interpretive aid only.

1.1 – How to use this guidance

2. This guidance is designed for individuals, organisations and personal employers. Throughout this guidance:

- o “individual” means: a worker; a person seeking work; a PVG Scheme member; a person under consideration for listing; or a person barred from regulated work, depending on context;
- o “organisation” includes employers, employment agencies, employment businesses and voluntary organisations; and
- o “personal employer” is a person, other than an organisation, asking an individual to do regulated work.

3. The PVG Scheme replaces enhanced disclosure for individuals working with vulnerable groups. Chapter 1 outlines the way the PVG Scheme works, focussing on the PVG Scheme membership processes and disclosure records.

4. The PVG Act 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. Chapter 2 explains the scope of regulated work and how to identify whether a particular activity or position involves regulated work. The PVG Act definitions of regulated work with children and regulated work with adults are at Annexes A and B, respectively.

5. There are two levels of fee (£59 / £18) which apply to the PVG Scheme, as well as free checks for volunteers doing regulated work for qualifying voluntary organisations. Chapter 3 sets out the fees to join the PVG Scheme and for accessing disclosure records and explains what a qualifying voluntary organisation is.

6. Retrospective checking is the process for managing how individuals already doing regulated work when the PVG Scheme goes live should be brought into the PVG Scheme. [Chapter 4](#) explains how this will work and also advises on organisations' existing re-checking policies.
7. The information contained in an individual's Scheme Record is sensitive and personal. Organisations and personal employers cannot share disclosure information without that individual's consent. [Chapter 5](#) explains when disclosure records can be shared and the limitations on doing so.
8. Organisations are under a duty to refer an individual who has done regulated work for them to Disclosure Scotland in certain circumstances. [Chapter 6](#) explains when organisations should make referrals and the process for doing so.
9. Mirroring the two types of regulated work (with children, with adults), the PVG Act establishes two lists of individuals who are unsuitable to do that type of work. An organisational referral, a court referral, new vetting information or a relevant inquiry report can trigger a consideration for inclusion in one or both of these lists. [Chapter 7](#) explains these triggers and the process and consequences of being under consideration for listing.
10. The PVG Act replaces the Disqualified from Working with Children List ("the DWCL") established under POCSA with the PVG children's list and makes provision for those individuals already included in DWCL to be migrated onto the PVG children's list automatically. It also establishes for the first time in Scotland, a list of those who are unsuitable to do regulated work with adults. Individuals convicted on indictment of certain sexual or violent offences are included in those lists automatically. [Chapter 8](#) explains how the PVG lists work and the consequences of being listed. It also explains how an individual can appeal against a listing decision or apply to be removed from the lists.
11. Access to the Scheme Record and Scheme Record Update can only be through a registered body. Most organisations already registered with Disclosure Scotland to access enhanced disclosures do not need to renew their registration to access these new disclosure records. However, all organisations should be aware of changes to the registration process. [Chapter 9](#) provides an overview of the registration process with a particular emphasis on the interaction with the PVG Scheme.
12. Key words and expressions are explained in the [Glossary](#).
13. It is unlikely that many readers will need to read the guidance in its entirety. It has been designed to allow individuals, organisations and personal employers

to identify the sections which relate to their particular circumstances. Chapters 1 and 2 are central. Most individuals will not need to go beyond chapter 3, unless they have a query or concern about the way their organisation is implementing the PVG Scheme.

Background to the PVG Scheme

14. Under Part 5 of the Police Act 1997 (“the 1997 Act”), the Scottish Ministers may carry out criminal record checks. There are three levels of checks: the criminal conviction certificate (basic disclosure); the criminal record certificate (standard disclosure); and the enhanced criminal record certificate (enhanced disclosure). Most enhanced checks have been carried out for the purpose of assessing the suitability of a person for working with vulnerable groups. Around 700,000 people in Scotland work with vulnerable groups, either through their paid employment or as volunteers. Since April 2002, the Scottish Government and BT have worked in partnership as Disclosure Scotland to provide criminal record checks for Scotland. In the first eight years of operation, over 4.6 million applications have been made for basic, standard and enhanced disclosures. In the 2008/09 financial year, 360,000 enhanced disclosures were processed for the purposes of working with vulnerable groups.

15. Since January 2005, the Scottish Ministers have kept a list of individuals who were considered unsuitable to work with children - the DWCL - introduced by POCSA. It has been an offence for anyone included in the list to work in a child care position in Scotland. In the first five years of operation, 393 individuals were listed on DWCL.

16. The PVG Act came about as a response to recommendation 19 of the Bichard Inquiry Report published in the June 2004, following Sir Michael Bichard's inquiry into the murder of two schoolgirls in Soham in 2002. The Inquiry looked at police intelligence gathering and record keeping, the way such information was shared, and the way it was used for vetting individuals as part of child protection procedures and made 31 recommendations. Recommendation 19 stated that, “new arrangements should be introduced requiring those who wish to work with children, or vulnerable adults, to be registered.”

17. The PVG Scheme ends the use of disclosure checks under the 1997 Act for work with children and adults at risk. They are replaced by new types of disclosure records under the PVG Act. The PVG Scheme ensures that those who either have regular contact with vulnerable groups through the workplace, or who are otherwise in regulated work, do not have a history of inappropriate behaviour. It excludes people who are known to be unsuitable, on the basis of past behaviour, from working with children and/or protected adults and detects

those who become unsuitable while in the workplace. Disclosure Scotland keeps a list of individuals who are considered to be unsuitable to work with children (“the children’s list”). Under the PVG Act, Disclosure Scotland also keeps, for the first time in Scotland, a list of those who are barred from working with protected adults (“the adults’ list”).

18. The PVG Scheme is managed and delivered by Disclosure Scotland as an executive agency of the Scottish Government. Disclosure Scotland also continues to deliver the other types of disclosure (which are still available under the 1997 Act for checks which are not for the purposes of work with children or protected adults). The Protection Unit within Disclosure Scotland receives and considers referrals and takes decisions, on behalf of Scottish Ministers, about those people who may be unsuitable to work with children or protected adults. The Protection Unit gathers and assesses all relevant information to make listing decisions.

Improvements offered by the PVG Scheme

19. The PVG scheme offers the following improvements on the current system:
- o effective barring - Disclosure Scotland does not just collect vetting information, it also assesses it so that individuals who are considered unsuitable on the basis of vetting information are prevented from entering the workforce;
 - o the adults’ list - a new list of individuals who are unsuitable to work with protected adults;
 - o continuous updating - continuing to collect vetting information about an individual after the initial disclosure check has been made so that new information indicating that they might be unsuitable can be acted upon;
 - o streamlined disclosure processes - recognising that some people may have several roles (e.g. a supply teacher in several different locations and a scout leader in their spare time) and that people move and change jobs over time; and
 - o access to disclosure for personal employers - they can check that the person they are seeking to employ is not unsuitable, e.g. a parent employing a sports coach for their child or someone buying a care service directly.

Access to basic, standard and enhanced disclosures

20. The three types of disclosures under the 1997 Act are still 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 for broadly the same positions as before, for example, 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 work¹.

1.2 – Quickstart guide to the PVG Scheme

21. This section is designed to answer the most basic questions about the PVG Scheme.

Action when the PVG Scheme goes live

22. Individuals who are in post and who are doing regulated work, whether or not they have ever had an enhanced disclosure, do not need to do anything when the PVG Scheme goes live.

23. Organisations do not need to do anything about their existing employees or volunteers who are doing regulated work when the PVG Scheme goes live, whether or not they have had enhanced disclosures.

24. When an organisation is asking an individual to do regulated work with children and / or regulated work with adults for them for the first time (whether an existing or new member of staff), the organisation should ask the individual to join the PVG Scheme. This is very similar to the decision they would have made about whether they needed to ask for enhanced disclosure.

Joining the PVG Scheme

25. Individuals who are self-employed, or expect to become self-employed, in a capacity which involves regulated work, may wish to join the PVG Scheme for, or in anticipation of, such work.

26. Organisations should ask individuals to whom they are offering regulated work with children and / or regulated work with adults for the first time to become PVG Scheme members. Organisations can ask existing staff to join the PVG Scheme as part of a continuation of existing practice of re-checking employees or volunteers from time to time. Organisations should not begin a new policy of re-checking existing staff doing regulated work from the start of the PVG Scheme.

Form for a PVG Scheme membership application

27. There is a new PVG Scheme application form which looks similar to the enhanced disclosure application form although it is a different colour.

¹

The Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 (SSI 2010/168) set out the criteria for eligibility for enhanced disclosures, for positions which are outside the scope of the PVG Scheme.

28. Organisations should note that the positions which are eligible for PVG Scheme membership are not quite the same as those eligible for enhanced disclosure and they should check that an individual's disclosure application relates to regulated work with children and / or adults. If it does not, they could ask for a basic disclosure and, in some cases prescribed by law, standard disclosure may be available.

Application fee

29. Joining the PVG Scheme costs £59 unless the application to join is for an individual who is doing voluntary work for a qualifying voluntary organisation. The cost reflects the benefits of PVG Scheme membership which includes cheaper subsequent checks in most cases, reduced bureaucracy and improved protection. The fees are waived for volunteers working for qualifying voluntary organisations joining the PVG Scheme. Qualifying voluntary organisation is defined by law for the purposes of the PVG Scheme but aims to preserve the current arrangements for volunteers (see chapter 3).

Information on a Scheme Record

30. A Scheme Record is issued to the individual and the registered body, in the same way as enhanced disclosures were issued. It contains similar information. Unlike an enhanced disclosure, 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.

Time to process an application

31. Joining the scheme and obtaining the first Scheme Record take about the same amount of time as obtaining an enhanced disclosure as the same processes need to be gone through by Disclosure Scotland.

Enhanced disclosure not an option

32. Enhanced disclosure is not available to people who are doing regulated work with vulnerable groups because the Scheme Record is available instead.

Making applications through CRBS

33. CRBS will continue to support organisations in respect of making applications for PVG Scheme membership, in much the same way as they do with enhanced disclosure.

1.3 - Applying for PVG Scheme membership

Safe recruitment practice

34. The PVG Scheme provides an organisation 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. This might prove helpful when an organisation is deciding whether an individual is suitable for the specific work being offered. 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 carry out proper recruitment checking of aspects such as skills and qualifications. Many organisations also check references to ensure that information asserted in an application form or CV is verified by previous employers or someone independent. The decision to offer regulated work should be determined by the content of the Scheme Record and information gathered using good recruitment practices. There is information about safe recruitment practice on the Scottish Government website² (and see also section 1.10). That decision about whether an individual is suitable for a position must always be taken by the organisation.

Eligibility

35. Membership of the PVG Scheme is open to people doing, seeking to do, or planning to do regulated work with children or protected adults. Also, certain professional regulatory bodies might ask their members to join the PVG Scheme. Individuals entering regulated work for the first time should expect to be asked by their employer or organisation to join the Scheme. Individuals who are already doing regulated work with children or adults should expect in time to be asked by their employer or organisation to join the Scheme.

Determining whether an individual is doing regulated work

36. 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 at the request of an organisation. This is covered in chapter 2.

Types of disclosure record available

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

- o the Scheme Record (see section 1.4) - at the request of an organisation; or
- o the Scheme Membership Statement (see section 1.6) - at the request of a personal employer or by the individual alone in anticipation of doing regulated work in the future.

38. A Scheme Record Update (see section 1.5) is not available to new entrants because it only makes sense in the context of a pre-existing Scheme Record.

Application form

39. When an individual wishes to join the PVG Scheme, they will need to fill in a detailed application form and provide proof of identity, just like for enhanced disclosure. (A simpler application form is available for subsequent disclosure applications by PVG Scheme members.) This application form will need to be countersigned by a registered body if it is for a Scheme Record or by a personal employer if it is for a Scheme Membership Statement and the personal employer wants to receive a copy. The application form does not need to be countersigned if it is made by the individual alone in anticipation of doing regulated work in the future.

Authentication

40. Where an individual applies to join the PVG Scheme in anticipation of doing regulated work or for a personal employer, Disclosure Scotland will carry out authentication by checking the evidence of identity provided by the individual. Copies of supporting documentation should be provided with the application. Original documents should not be sent.

41. Where an individual applies to join the PVG Scheme at the request of a registered body, they will verify that identity documentation has been shown to them and countersign the form. Disclosure Scotland will still carry out some identity checks of its own and if necessary might request copies of supporting documents from applicants.

42. Where an individual is volunteering for regulated work in a qualifying voluntary organisation in Scotland, CRBS will be able to countersign the form as long as the organisation is enrolled with CRBS for that purpose. Disclosure Scotland will still carry out authentication checks in the background and if necessary might request copies of supporting documents from applicants.

Processing a PVG Scheme membership application

43. When an application to join the PVG Scheme is received, Disclosure Scotland will first check that the individual is not already barred from doing regulated work. If the individual is barred, they will be refused PVG Scheme membership. If the individual is not barred, Disclosure Scotland will create a unique record of scheme membership for the individual and search for vetting information from a range of sources. In over 90% of cases³, no vetting information will be found and the individual will become a member of the PVG Scheme.

44. If vetting information is found about an individual which does not have a bearing on the individual's suitability to do regulated work, then it will be added to their record. If the application was in respect of a Scheme Record, this vetting information would appear on it.

45. If vetting information is found about an individual which does have a bearing on the individual's suitability to do regulated work, then it will still be added to their record. Additionally, it will be examined by the Protection Unit at Disclosure Scotland to determine whether or not to put the individual under consideration for listing.

46. If an applicant for PVG Scheme membership is placed under consideration for listing, that person will still become a PVG Scheme member during the time the consideration is taking place, and the disclosure record issued in response to the application will state that fact. If the application was in respect of a Scheme Record, the vetting information would also appear on it. For more about the consideration for listing process see chapter 7.

³

Based on experience of processing enhanced disclosure applications.

- o Disclosure Scotland will keep the individual's PVG Scheme membership and vetting information up to date. This process is called continuous updating and is one of the biggest differences between enhanced disclosure and the PVG Scheme. Enhanced disclosures simply provided a snapshot of a person's criminal conviction history at the point-in-time when the disclosure was issued. No information was updated by Disclosure Scotland until a further application, if any, for an enhanced disclosure was made and a new enhanced disclosure was issued.

Issuing disclosure records

47. Assuming the individual is not barred, Disclosure Scotland will issue the requested disclosure record and this will also mean that the individual is now a member of the PVG Scheme:

- o A Scheme Record is issued to the individual and the person in the registered body who countersigned the application (and to the GTCS or SSSC, where the applicant has included a registration number on the application form). If the individual is working for an organisation which is not the registered body, the disclosure record will be passed to that organisation. The most common example of this is the role of CRBS acting as a registered body for voluntary organisations.

- o A Scheme Membership Statement is issued to the individual and to the personal employer who countersigned the application (if any).

What happens after that

48. Once an individual is a PVG Scheme member:

- o This means that access to disclosure records is much faster because all the information is already held by Disclosure Scotland. For an explanation of the three types of disclosure record, see sections 1.4 to 1.6 below.
 - o Any new vetting information that comes to light about a PVG Scheme member will be assessed. If the information suggests that the PVG Scheme member may have become unsuitable to do regulated work with children or protected adults, then they will be placed under consideration for listing. See chapter 7 for more about consideration for listing.
 - o Disclosure Scotland will keep a record of registered bodies and regulatory bodies which have an interest in the individual.
 - o If a PVG Scheme member is placed under consideration for listing or barred, the individual and any organisation(s) with an interest in the individual will be notified.

What scheme membership means

49. Just because an individual is a PVG Scheme member (and so not unsuitable to do that type of regulated work) does not necessarily mean that the individual is suitable to work in a specific position. That decision must always be taken by the employer, informed by the content of the individual's Scheme Record as well as other good recruitment and employment practice.

1.4 – The Scheme Record

50. The Scheme Record is the replacement for enhanced disclosure for work with vulnerable groups.

Purpose

51. 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 (or where a Scheme Record Update reveals a change to vetting information). The organisation must be a registered body or use an umbrella body to act as a registered body on their behalf.

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

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

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

- o convictions and cautions held on central records in the UK;
- o whether the individual is included on the sex offenders register;
- o relevant non-conviction information provided by police forces;

and

- o prescribed civil orders.

54. The Scheme Record also includes the following personal membership information:

- o the name, address, date of birth and PVG Scheme membership number of the individual;
- o the unique disclosure number of the Scheme Record;
- o the name and address of the registered body and countersignatory details - on the copy for the registered body copy and any regulatory body; and
- o the name and address of the regulatory body and registration number - on any copy for a regulatory body only.

Prescribed civil orders

55. The civil orders that can be disclosed on the Scheme Record are:

- o a sexual offences prevention order (or interim order) under the Sexual Offences Act 2003 ("the 2003 Act");
- o a foreign travel order under the 2003 Act;
- o a risk of sexual harm order (or interim order) under the 2003 Act;
- o a notification order (or interim order) under the 2003 Act; and
- o a risk of sexual harm order (or interim order) under the Protection of Children and Prevention of Sexual Offences (Scotland) 2005.

Usage

56. A Scheme Record costs £59 (see chapter 3 for more information on fees).

57. A Scheme Record is to be used in broadly the same way as an enhanced disclosure. But:

- o Unlike enhanced disclosure, a Scheme Record will not be issued if the individual is barred. Instead, a letter would be issued to the individual and registered body.
- o Unlike enhanced disclosure, a Scheme Record is portable. That is, it relates to one or both workforces and is not specific to the post.
- o The Scheme Record Update should be used for existing PVG Scheme members who already have a Scheme Record.

Case Study C1.1 New PVG

Scheme member

A. Jane works as a consultant paediatrician in a hospital. She is not a PVG Scheme member. She applies for a job in another hospital and she is asked to join the PVG Scheme.

B. Jane's specialism means that she does regulated work with children only. Her new employers should ask her to join the PVG Scheme in respect of regulated work with children and obtain a Scheme Record at a cost of £59. They must not ask her to join in respect of regulated work with adults.

Case Study C1.2 Existing PVG

Scheme member

A. A few months ago, Alison joined the PVG Scheme in respect of regulated work with adults because she took a new position as a volunteer with WRVS which involved caring for protected adults. Now Alison wants to help out at her local school.

B. Although she has a Scheme Record from her voluntary work, this only relates to regulated work with adults. It will be necessary for the school to ask her to apply to join the PVG Scheme in respect of regulated work with children to obtain a new Scheme Record for this purpose at a cost of £59. The school cannot make use of the Scheme Record Update as she does not have a previous Scheme Record for this workforce. But as Alison was already a member of the PVG Scheme in respect of regulated work with adults (and has therefore provided all her personal information to Disclosure Scotland before), she uses the short application form for this purpose.

1.5 – The Scheme Record Update

58. The Scheme Record Update is a new type of disclosure. It is designed to be a quicker, cheaper and simpler check for organisations recruiting individuals who are already PVG Scheme members (see Usage below).

Purpose

59. The Scheme Record Update is designed for use by organisations when asking an individual who is already a PVG Scheme member (and who has already had Scheme Record issued in the past) to do regulated work for them. The organisation must be a registered body or use an umbrella body to act as a registered body on their behalf.

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60. A Scheme Record Update shows basic membership information (common to all three types of disclosure record):
- o 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
 - o if the individual is under consideration for listing for the type(s) of regulated work, states that fact.
61. A Scheme Record Update also includes:
- o the date that the PVG Scheme member's Scheme Record was last disclosed (and the disclosure record number of the applicant's copy);
 - o a statement as to whether that Scheme Record contained vetting information;
 - o either a statement confirming that no new vetting information has been added since the Scheme Record was last disclosed or the date of each addition; and
 - o either a statement confirming that no vetting information has been deleted since the Scheme Record was last disclosed or the date of each deletion.
62. The Scheme Record Update also includes the following personal membership information:
- o the name, address, date of birth and PVG Scheme membership number of the individual;
 - o the unique disclosure record number; and
 - o the name and address of the registered body and countersignatory details.
63. The Scheme Record Update does not include any vetting information. One reason for this is to allow it to be viewable on-line through a normal web browser as part of the on-line functionality to be made available during 2011.

Usage

64. If an organisation wants to check an individual who is already a PVG Scheme member and who has already obtained a Scheme Record (whether or not as a result of a request from that organisation), they should apply for a Scheme Record Update. In the past, over 90% of enhanced disclosures had no vetting information on them at all. This means that the overwhelming majority of Scheme Record Updates will state that the individual's Scheme Record contained no vetting information and the organisation will not need to see the individual's Scheme Record at all.
65. The Scheme Record Update always costs £18 and is cheaper than a Scheme Record (at £59) and enhanced disclosure under the previous arrangements (£23 then £25 from PVG Scheme go-live). (See chapter 3 for more

information on fees.) PVG Scheme membership does not expire so the many individuals with no vetting information on their Scheme Record will only ever require to request Scheme Record Updates for the rest of their working life.

66. The application for a Scheme Record Update (and any other disclosure record for an individual who is already a PVG Scheme member) is made on a short form requiring much less information from the individual because Disclosure Scotland already has the individual's personal information.

67. An application for a Scheme Record Update can be turned round very quickly because all the information needed to generate the disclosure is already held by Disclosure Scotland, so there is no delay in retrieving information from other sources. (This also applies to other disclosure records in respect of individuals who are already PVG Scheme members.) But the additional benefit with a Scheme Record Update is that it will be able to be viewed online, once the on-line functionality is rolled out in 2011. This means that organisations will be able to put in place arrangements to get the results of such a check almost instantly.

68. In the tiny minority of cases where a Scheme Record Update indicates that there is vetting information on the Scheme Record, the individual should be asked to provide their copy for inspection. The information on the Scheme Record Update will allow the organisation to confirm whether the Scheme Record shown is most recent one issued. Again, where there is no new vetting information, this combination of the new Scheme Record Update and the existing Scheme Record provides the sum total of the information about the individual.

69. There will, however, be cases where a Scheme Record Update indicates that new vetting information has been added since the last Scheme Record. In these cases, the organisation could lawfully recruit the individual on the basis of the information in the Scheme Record Update alone (as this is sufficient to indicate that the individual is a PVG Scheme member and not barred). However, if the organisation wishes to know what the new vetting information is, they should upgrade to a Scheme Record. This will not cost any more than if the original request had been for a Scheme Record, if it is made within 30 days of the date of issue of the Scheme Record Update (see chapter 3).

70. The upgrade to a Scheme Record requires the consent of the individual. But an organisation asking an individual to do regulated work has the right to ask about the additional vetting information. The organisation could consider whether to terminate any regulated work that the individual did for it, if such consent was withheld without good reason.

Case Study C1.3 No information on the Scheme Record

A. Donald is a doctor and is a PVG Scheme member and has a Scheme Record in respect of both workforces. Donald decides to look after the crèche in his local church.

B. The church knows that looking after the crèche is regulated work with children and asks for a Scheme Record Update. The Scheme Record Update comes back indicating that there is no vetting information on Donald's last Scheme Record nor any new vetting information since. This means that the church can appoint Donald without asking to see his old Scheme Record as everything they need to know is on the Scheme Record Update.

Case Study C1.4 Information on the Scheme Record

A. Rohit joins the PVG Scheme at a cost of £59 when recruited to teach geography in a secondary school. His Scheme Record contains one minor conviction for theft from some time ago. The headmaster decides that the time elapsed since the conviction taken together with the exemplary references from previous employers means that Rohit can be appointed.

B. One year later, Rohit is successful in applying for a head of department job in another school. His new school asks for a Scheme Record Update at a cost of £18. This reveals that there is no new vetting information since the last Scheme Record but that there was vetting information in it. Rohit has kept his copy of the Scheme Record and presents this to the headmaster the new school. The date of issue, personal details and certificate number of Rohit's old Scheme Record are all corroborated by the new Scheme Record Update. As before, the headmaster decides that the time elapsed since the conviction taken together with the exemplary references from previous employers means that Rohit can be appointed. The new school was able to make this decision by paying only for Scheme Record Update at £18, rather than asking for a new Scheme Record at £59.

Case Study C1.5 New vetting information

A. Nurseries Ltd are recruiting Linda, a new member of staff. Linda's job application form showed that she was previously a primary school teacher so has done regulated work with children and is therefore likely to be PVG Scheme member.

B. Nurseries Ltd offered Linda the job, subject to no issues with her disclosure record. She advised that she was a PVG Scheme member in respect of regulated

work with children and had a Scheme Record from her previous employment. She advised her employer that she had received a driving conviction since then.

C. Nurseries Ltd asked her to apply for a Scheme Record Update at a cost of £18. This confirmed that she was a member of the PVG Scheme, as she had advised. It also confirmed that there was no information on her previous Scheme Record, but that there was new vetting information from last December, which confirmed what Linda had said about the timing of her driving conviction.

D. Nurseries Ltd could employ Linda without asking for a Scheme Record (because her PVG Scheme membership ensures that she is not barred from doing regulated work with children). But they decide that they would like to confirm what the new vetting information is. So, they followed up with a request for a Scheme Record (at an additional cost of £41). This confirmed Linda's explanation – the new vetting information was indeed the driving conviction. As her duties did not involve driving children, Nurseries Ltd had no issue with employing her.

1.6 – The Scheme Membership Statement

71. The Scheme Membership Statement is a new type of disclosure.

Purpose

72. 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. As it is for sharing with personal employers, it does not contain vetting information.

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73. The Scheme Membership Statement shows basic membership information (common to all three types of disclosure record):

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

74. It also includes the following personal membership information:

- o the name, address, date of birth and PVG Scheme membership number of the individual;
- o the unique disclosure record number; and
- o the name and address of the personal employer on the personal employer's copy.

Usage

75. Any individual who is not barred can apply for a Scheme Membership Statement in anticipation of future regulated work. Such an application will always cost £59.

76. A personal employer can require an individual to join the PVG Scheme (if necessary), countersign the application and receive their own copy of the Scheme Membership Statement. This will cost £59 or £18, depending on whether the individual is already a member of the PVG Scheme. There is more information for personal employers at section 1.9.

Case Study C1.6 Application in anticipation of regulated work

A. Tom wants to volunteer working with children in the summer. He has a conviction from 10 years ago for breach of the peace because he got involved in a fight outside a pub. He recalls that some people involved in the fight were under 18 and is concerned it might affect his chances of doing regulated work with children.

B. Tom decides that it would be useful to resolve this before he seeks to do voluntary work. He applies to join the PVG Scheme. He pays £59 and receives a Scheme Membership Statement. When he applied, Disclosure Scotland found the conviction on his record and assessed it to see whether he should be considered for listing. In his case, it was decided that there were not sufficient grounds for consideration for listing and his Scheme Membership Statement was issued, simply stating that he was a member of the PVG Scheme in relation to regulated work with children.

C. Later, when Tom approaches a voluntary organisation for specific post, they ask him to apply for a Scheme Record, which reveals his conviction. But, by joining the PVG Scheme in advance, Tom has ensured that the information has already been assessed by Disclosure Scotland and that the Scheme Record will be issued very quickly (because all the information has already been collated).

Case Study C1.7 Self-employed piano teacher

A. Sally is at university studying music. During the summer break, she intends to offer piano lessons to children in their own homes to augment her income. She knows this will be regulated work with children and anticipates that at least some parents will want to see a Scheme Membership Statement.

B. Sally applies to join the PVG Scheme in respect of regulated work with children. Sally pays £59. Sally is issued with a Scheme Membership Statement in April. She starts work providing piano lessons in June. The first few parents are content to see her Scheme Membership Statement from April. When she takes on new clients in August, some parents ask for a more recent Scheme Membership Statement. She asks one parent to countersign an application, she pays £18 and she and that parent receive a new Scheme Membership Statement. She now uses this Scheme Membership Statement to show to other parents and destroys her old copy.

1.7 – Membership matters for individuals

77. One consequence of the PVG Scheme being a membership scheme is that the individual has an ongoing relationship with Disclosure Scotland and that some PVG Scheme documentation issued has an ongoing relevance. This is different to the enhanced disclosure process.

Looking after disclosure records

78. All disclosure records contain the individual's PVG Scheme membership number, which will not change (unlike the disclosure number which is unique to every disclosure record issued). PVG Scheme members should keep a careful note of this number as it will speed up any applications made to Disclosure Scotland at a later date. Any Scheme Record issued to a PVG Scheme member should be retained, in case any organisation wants to see it when the individual seeks to do regulated work elsewhere. The most recent Scheme Membership Statement should also be retained, in case any personal employer wants to see it. (Scheme Record Updates are not portable and can be destroyed.)

Notifying Disclosure Scotland of changes to personal information

79. The PVG Act requires PVG Scheme members to notify two types of change to personal information to Disclosure Scotland within three months of the change taking effect, these being:

- o a change in the member's name; or
- o a change in gender (as indicated by the issue of a full gender recognition certificate).

80. Failure to do so, without reasonable excuse, is an offence.

81. Individuals should keep other personal information up to date too. Ensuring Disclosure Scotland has, for example, a current home address, telephone number or email address means that contact can be made quickly in the event of any query about PVG Scheme membership.

82. It will also ensure no delay in issuing a subsequent disclosure record. A change in personal information will sometimes require re-vetting. This process can take time. If the change in personal information only comes to light at the time of a disclosure application, this will delay the issuing of the disclosure record. In particular, it would prevent a Scheme Record Update been available on-line, when this service becomes available in 2011.

Stopping doing regulated work for an organisation

83. PVG Scheme members should notify Disclosure Scotland if they cease to work for a particular organisation. When Disclosure Scotland receives such a notification, it will seek confirmation from the organisation before removing the organisation's interest in the individual. There is no requirement on individuals to do this but, if they do not, they risk previous employers being notified of any consideration for listing or listing decision.

Leaving the PVG Scheme

84. A PVG Scheme member may ask to leave the PVG Scheme in respect of one or both workforces at any time, provided they are no longer doing the type of regulated work to which their request for removal relates. An individual with no interested organisations will normally be assumed to be no longer doing regulated work and therefore free to leave the PVG Scheme. But note that if the individual wished to re-join the PVG Scheme at a later date, the application process (including fee charged) would be the same as if they had never been a PVG Scheme member.

Disputing vetting information

85. Individuals may request correction of any information on their Scheme Record including the vetting information. A review of conviction information, sex offender notification details and details of civil orders can be requested on the grounds of accuracy (i.e. that a particular conviction, caution or civil order does not belong to the individual or is incorrectly described). A review of non-conviction information provided by the police can be requested on the grounds of accuracy or relevance to the regulated work performed by the PVG Scheme member.

86. Disputes about the accuracy of vetting information in a disclosure record must be raised within 3 months of the date of the scheme record being issued⁴. There is detailed guidance about how to dispute the content of disclosure records on the Disclosure Scotland website⁵.

⁴ Protection of Vulnerable Groups (Scotland) Act 2007 (Administration of the Scheme) Regulations 2010 (SSI 2010/193). www.disclosurescotland.co.uk/understanding/dispute/

87. If the request for review is about the non-conviction information provided by a police force, Disclosure Scotland will contact the police force or forces that provided the information with details of the dispute. Only if the police force agrees to amend the information will Disclosure Scotland be able to amend the Scheme Record.

88. In all cases where a Scheme Record is corrected, Disclosure Scotland will issue new Scheme Records to the scheme member and organisations for whom they know the person is doing regulated work if they had received an inaccurate version of the Scheme Record. There will not be a charge for the disclosures that are reissued and these will be dated with the date of the original Scheme Record.

Falsification of disclosure records

89. Section 65 makes it an offence to falsify a disclosure record. Reasons why an individual might attempt to falsify a disclosure record include attempting: to avoid paying a fee for a disclosure application; to avoid embarrassment over some historic incident or conviction; or to obtain a position, or enter regulated work generally, unlawfully.

90. It should be noted that there are a number of security measures which make falsifying a disclosure record extremely difficult. These include information on the disclosure records which can be corroborated against identity documentation presented by the individual.

Doing regulated work when barred

91. It is an offence⁶ for an individual who is barred to undertake the type of regulated work from which they are barred. Such an individual would usually be aware of their barring (because they would have been listed following a conviction or organisational referral etc through proceedings in which they would have participated).

1.8 – Do's and don'ts for organisations

Requesting disclosure records

92. It is an offence⁷ for an organisation to offer regulated work to someone who is barred or to fail to remove a person from regulated work if they have been notified that they are barred. The way to avoid committing this offence is to ensure that any individual being recruited to do regulated work is a PVG Scheme member by asking for the most appropriate disclosure record. Organisations should normally use the Scheme Record for new members and

⁶ Section 34 of the PVG Act.

⁷ Section 35 of the PVG Act.

the Scheme Record Update for existing members. Organisations are not prohibited from requesting Scheme Membership Statements but this is discouraged as they will not receive as much information as they are entitled to do.

93. Only registered bodies can access Scheme Records and Scheme Record Updates. Not all organisations are registered bodies. Organisations asking individuals to do regulated work for them should either become registered bodies (see chapter 9) so that they can countersign disclosure applications themselves or use the services of an umbrella body, a registered body that can do this for them.

Unlawful requests for disclosure records

94. Many organisations will offer regulated work and also work that is not regulated work. The PVG Scheme disclosure requests can only be used for regulated work only. Work that is not regulated work, may qualify for standard disclosure (especially in health care settings). Basic disclosures can be used for any purpose. It is an offence to ask someone to apply to join the PVG Scheme or make a disclosure application in relation to work which is not regulated work under the PVG Act.

Using disclosure information for recruitment decisions

95. An organisation is entitled to use all vetting information on a Scheme Record to inform a recruitment or retention decision. However, an organisation must apply any criteria around vetting information in a fair, consistent and proportionate manner. The criteria should be identified in advance and linked to the specific role. An individual who is allowed to become or remain a PVG Scheme member is not unsuitable to do regulated work. However, vetting information may indicate that they are not suitable to do a particular job. For example, recent driving convictions may exclude an individual from doing a job which involves driving.

96. An organisation can refuse to recruit or continue to use an individual to do regulated work if that individual refuses to consent to PVG Scheme membership or disclosure records without reasonable grounds to do so.

97. Any organisation who receives an individual's disclosure record from Disclosure Scotland to help them make a recruitment decision can use it only for that purpose. They must not use it for a purpose other than the reason it was originally requested. Usually this will be part of the process of deciding on that individual's job application. The organisation or personal employer is not allowed to pass it on to anyone who is not involved in making the recruitment decision. If they do so, they will be committing an offence.

Retention of disclosure records

98. Disclosure records retained by an organisation (for however long or short a period) must be stored securely. Secure storage means, for example, that the record should be stored in a locked and non-moveable storage unit to which people in general do not have access.

99. Organisations should not retain disclosure records indefinitely. However, the organisation can retain details of when the check was made, the disclosure reference number, and the date of the check and for whom it was carried out. This can provide evidence if needed, for example, to an inspection body that appropriate checks have been carried out on staff.

100. Organisations should be aware at all times of the need to comply with the Data Protection Act 1998 which requires that personal information should be kept only for as long as it is required for the purposes for which it was obtained. The Information Commissioner's website⁸ is also helpful.

101. More information on this topic can be found about this in the Code of Practice (revised to take account of the PVG Scheme).

When a PVG Scheme member leaves the organisation

102. Disclosure Scotland maintains a record of all the organisations that have an interest in a PVG Scheme member. Where an organisation has requested a Scheme Record or Scheme Record Update in respect of an individual, that organisation is assumed to have an interest in that individual until Disclosure Scotland is notified otherwise. Additionally, any regulatory body whose registration number has been provided on an application form will also be assumed to have an interest in that individual.

103. Where a PVG Scheme member ceases to do regulated work for an organisation, the individual should notify Disclosure Scotland. If that happens, Disclosure Scotland will seek confirmation from the organisation. Once that is received, the organisation will be removed from the record of scheme membership.

104. The on-line registered body accounts which will become available in 2011 will make it very easy for organisations to manage their interest in individuals who work for them. Organisations will be able to de-register an interest in an individual through their on-line account and approve such notifications from individuals.

105. If an organisation receives a notification concerning the consideration for listing or barring of an individual who no longer does regulated work for them, Disclosure Scotland should be contacted immediately and the notification returned.

Removing barred individuals from regulated work

106. It is an offence⁹ for an organisation not to remove an individual from regulated work when notified by Disclosure Scotland that they are barred. This is most likely to happen following an organisational referral by another organisation.

1.9 - Do's and don'ts for personal employers

107. A personal employer can employ a barred individual without committing an offence, although they are encouraged to make use of the PVG Scheme so that they can be sure that an individual is not barred. An individual who is barred from regulated work and who seeks to do, or does, regulated work for a personal employer is committing an offence.

108. A personal employer asking an individual to do regulated work can request to see that individual's Scheme Membership Statement. This can be a Scheme Membership Statement issued some time in the past (but not too long ago) or the personal employer can ask for a new Scheme Membership Statement to be issued but either they or the individual would need to pay for it.

109. A personal employer must not ask to see any other form of disclosure record for any purpose or to see a Scheme Membership Statement for a purpose other than because the individual is doing regulated work for them. To do so is an offence.

110. A personal employer should not retain a Scheme Membership Statement but should either hand it back to the individual or destroy it properly (e.g. with a shredder). It is not appropriate simply to put it in the bin.

111. A personal employer cannot make a referral to Disclosure Scotland (see chapter 6).

⁹

Under the Protection of Vulnerable Groups (Scotland) Act 2007 (Removal of Barred Individuals from Regulated Work) Regulations 2010 (SSI 2010/244).

1.10 – Outside Scotland: VBS and overseas

112. The Safeguarding Vulnerable Groups Act 2006 (“the SVG Act”) and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 establish a similar vetting and barring scheme (“the VBS”) for England, Wales and Northern Ireland. The introduction of the VBS and PVG Scheme on similar timescales in different parts of the UK raises a number of questions about how they interact.

113. The first point to note is that the vast majority of individuals in Scotland work entirely within Scotland and so will have no need to be concerned about VBS, unless they are on a VBS barred list, in which case they also cannot do that type of regulated work in Scotland. But, equally important, is the need to comply with the law in the relevant jurisdiction. For example, work done in England, Wales and Northern Ireland must comply with the rules of VBS. There are important differences between VBS and the PVG Scheme, including a difference in the scope of regulated work (called regulated activity in VBS) and the rules about when checks are mandatory. For information about the legislation and guidance which apply in England, Wales and Northern Ireland, please refer to the VBS website¹⁰.

Scope of the PVG Scheme

114. The PVG Scheme can only be used in respect of regulated work in Scotland; it is an offence to use disclosure records for other purposes. The VBS should be used for regulated activity (which is the VBS equivalent of regulated work in England, Wales and Northern Ireland). Normally, the most appropriate check for any particular post will be determined by the employing organisation. This will mean that, in some cases, an individual will require to be a member of both the PVG Scheme and VBS.

Sharing the lists

115. Normally, an individual will be listed by either Disclosure Scotland or the Independent Safeguarding Authority (i.e. not both) but will then be barred across the UK. Disclosure Scotland has access to the Independent Safeguarding Authority’s lists and checks them in respect of PVG Scheme applications and members. This means that an individual cannot be a PVG Scheme member in respect of a type of regulated work for which they are listed anywhere in the UK, see chapter 8.

Interacting with the Independent Safeguarding Authority

116. The Scottish Government and UK Government have agreed the circumstances in which Disclosure Scotland leads on a listing case and the

¹⁰

www.direct.gov.uk/vetting

circumstances in which the Independent Safeguarding Authority leads on a listing case, in order to avoid:

- o double jeopardy – where an individual has the same information considered twice (may be years apart);
- o double consideration - where an individual is actively under consideration for listing by both jurisdictions at the same time; and
- o double barring - where an individual is included on two corresponding lists, for example, included on both the SVG adults' barred list and the PVG adults' list.

o [Safer Recruitment for Safer Services - A report in the quality of recruitment practices in registered care services - Care Commission, November 2008](#)

117. These issues are most likely to arise in respect of individuals who are members of both the PVG Scheme and VBS. For example, where an individual joins the VBS and the Independent Safeguarding Authority consider the vetting information and decide that the individual can join the VBS, that same information should not lead to the person being considered for listing under the PVG Scheme if he or she applies to join the PVG Scheme at a later date. The PVG Scheme should only consider new vetting information or vetting information that did not come to light when the SVG application was made.

Recruiting individuals from overseas

118. Individuals recruited from overseas to do regulated work in Scotland should be asked to join the PVG Scheme in the same way as individuals recruited from Scotland. The same checks will be performed by Disclosure Scotland to discover whether they are known to UK information sources and membership of the scheme will ensure that any new vetting information about them is picked up and dealt with quickly.

119. Disclosure Scotland cannot gather information on individuals from overseas. For advice on dealing with instances where overseas information might be required, refer to the Criminal Records Bureau's overseas advice web page¹¹.

120. As with recruiting individuals from Scotland, organisations are responsible for safe recruitment practice, including checking identity, references, background and verifying documentation prior to appointment. Good recruitment practice guidance is available from various sources:

- o [Safer Recruitment through Better Recruitment Guidance](#)
- o [Safer Pre and Post Employment Checks - NHS Scotland](#)
- o [Disclosure Scotland website](#)
- o [CRBS website](#)

121. The Scottish Government is working with the UK Government to improve the exchange of conviction information with other European countries and non EU countries that provide significant numbers of overseas workers to the UK. However, many countries have different justice systems and policies on retaining conviction information and there are significant challenges in translating and interpreting any information that could be provided. This work is therefore complex and will take some time to bring to fruition.

Recruiting individuals to work overseas

122. Basic, standard and enhanced disclosures can be issued for work abroad in certain circumstances. The Scottish Government proposes that PVG Scheme membership and disclosures should be available where Scottish organisations are recruiting individuals to do work abroad which would have been regulated work had it been done in Scotland. An example would be where a Scottish charity is recruiting an individual to teach children in Africa, an activity which would be within the scope of regulated work with children if it was carried out in Scotland. Disclosure Scotland is best placed to undertake disclosure checks for individuals being posted abroad, as any previous criminal history will be recorded in Scotland and not their host country. Unfortunately, this guidance is not able to be definitive on this point at the time of publication. Further advice will be posted on the Disclosure Scotland website.