

Protecting Vulnerable Groups and Disclosure Checks Policy

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1 Introduction

The Protection of Vulnerable Groups Scheme (PVG) was established by the Protection of Vulnerable Groups (Scotland) Act 2007 (“the PVG Act”). The Act came about as a response to recommendations of the Bichard Inquiry Report published in June 2004, following the enquiry into the murder of two schoolgirls in Soham in 2002.

This Policy and Guidance explains what the PVG Scheme is for, how it will be used and how the information received will be handled and stored.

The PVG Scheme replaces enhanced disclosure for individuals working with vulnerable groups, and introduces a new concept of ‘regulated work’.

Work is defined in a broad sense and includes paid or unpaid work but does not include work done for someone in the course of a family relationship or in a personal relationship¹ that is not for commercial purposes.

Regulated work with children supersedes the definition of child care position in the Protection of Children (Scotland) Act 2003 (“PCSA”) and the Disqualified from Working with Children List (“DWCL”). A child is defined as an individual aged under 18 years.

It also establishes a list of those who are unsuitable to do regulated work with adults and supersedes the contact with an adult at risk. A protected adult is someone over 16 years of age who receives a type of care, support or welfare service².

The PVG Scheme ensures that those who have regular contact with vulnerable groups through the workplace do not have a history of inappropriate behaviour or become unsuitable while working for the University of Strathclyde.

The PVG Scheme is managed and delivered by Disclosure Scotland as an executive agency of the Scottish Government. Disclosure Scotland also continues to process other types of disclosure i.e., basic and standard, which are still available under the 1997 Act for checks which are not for the purposes of work with children or protected adults and some positions within the University may require new post holders to obtain a successful basic or standard disclosure certificate, particularly where the work involves frequent unsupervised contact with students. All Academic and Learning and Teaching roles will require a basic disclosure as a condition of employment with the University.

Disclosure Scotland also receives and considers referrals and takes decisions, on behalf of the 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.

¹Family relationship is defined by its dictionary meaning and includes parents, aunts, uncles, grandparents, siblings, children, grandchildren and relationships between individuals who live in the same household and treat each other as though they were family members (Section 95(5) of the PVG Act.

²There are 4 categories of services: Registered care services; a support service; an adult placement service, a care home service or a housing support service.

2 Assessing if work is Regulated

It is the responsibility of the recruiting manager to determine if a post involves regulated work. The authority to appoint process includes information on how to risk assess a post. Further advice and support, if required is available from your Human Resources support team.

Work will be regulated if it meets **any** of the following criteria:

Normal day to day activities include working with an individual or groups of individuals aged under 18 years of age or protected adults and carrying out the following activities:

- Caring for children or protected adults
- Teaching, instructing, training or supervising children or protected adults
- Being in sole charge of children or protected adults
- Unsupervised contact with children
- Providing advice or guidance to a child or children or protected adult/s which relates to physical or emotional well-being, education or training
- Moderating a public electronic interactive communication service which is intended for the use wholly or mainly of children
- Providing or working for an organization which provides, a care home services which is exclusively or mainly for children
- Providing, or working for an organization which provides an independent health care service which is provided exclusively or mainly for children
- Work on any part of a day care premises at times when children are being looked after in the part
- Being a host parent

Normal duties³ involve working in any part of the following establishments where the contact is more than incidental:

- An institution for the detention of children
- A hospital mainly for children
- A school
- A Further Education institution
- A hostel for pupils attending school or education
- A home/residential environment which is for children or protected adults and provided by an organisation or council

If an individual is in any of the following positions:

- Manager or member of a governing body or trustee responsible for the management of a school further education institution or hostel
- Member of a council or joint committee or sub-committee concerned with the provision of education, accommodation, social services or health care services to children or protected adults
- Has day to day supervisory or management responsibility for individual doing regulated work with children or protected adults.

³For an activity to be regulated the activity must be part of the individual's normal duties and no particular frequency for undertaking the work is specified in the Act

3 Exceptions to Regulated Work

The scope of regulated work is narrowed by the incidental test. Some, but not all, activities with children or protected adults are excluded from being regulated work if the activity is occurring incidentally to working with individuals who are not children or protected adults such as academic and teaching staff in HE establishment. This is because the presence of children or protected adults is incidental to the main activity and purpose.

An activity is likely to be incidental when it is:

- Open to all (characterized by where the event is held, where it is advertised, admission policy etc)
- Attractive to a wide cross-section of society
- Attendance is discretionary.

An activity will **not be** incidental when it is:

- Targeted at children or protected adults
- More attractive to children or protected adults

Attendance is mandatory

Where the contact with children is in the course of the children's work or employment e.g., a modern apprentice or with 16 or 17 year olds on work experience then this is not within the scope of the PVG.

4 Safe Recruitment Practice

The University will ask individuals to whom we are offering regulated work with children and or protected adults for the first time to become PVG Scheme members. Existing staff that are doing regulated work will also be required to become members of the scheme after the scheme commences. When processing applications as a registered body individuals will require to provide identity documentation to the University and Disclosure Scotland may request copies of any supporting documents provided by applicants.

When an individual is required to join the PVG Scheme because they are undertaking regulated work as part of their employment (or prospective employment) with the University then, the University will countersign the application and pay the required fee.

Staff who are also members of certain professions may be required by the regulatory body to join the scheme, and if they are not undertaking regulated work on behalf of the University they will require to pay any associated fee themselves. Where an individual applies to join the PVG Scheme in anticipation of doing regulated work for another employer or for a personal employer then the University will not be able to countersign the form or pay an associated fee.

When an application is received by Disclosure Scotland they will check that the individual is not already barred from doing regulated work. They will then create a unique record of scheme membership and search for vetting information from a range of sources⁴, if no relevant information is found then the individual will become a member of the PVG Scheme.

A Scheme record is then issued to the individual and to the University counter signatory that signed

⁴ Convictions and cautions held on central UK records; sex offenders register; non conviction information provided by police forces; prescribed civil orders

the application (and to the GTCS or SSSC where the applicant has included a registration number on application form).

After joining the Scheme, Disclosure Scotland will keep the individual's PVG Scheme membership and vetting information up to date. This process is called continuous updating and means that any new vetting information that comes to light about a PVG Scheme member will be assessed by Disclosure Scotland and if it is considered that this information makes them unsuitable to do regulated work with children or protected adults, then they will be placed under consideration for listing.

Disclosure Scotland will keep a record of registered bodies that have an interest in an individual.

If vetting information is found which DOES NOT have a bearing on the individual's suitability to do regulated work, then it will be added to their record and this information will then appear on the Scheme Record received by the University. The University may subsequently wish to meet with the individual to discuss the information on the Scheme Record and decide if the information has a bearing on the individual's suitability to undertake the post or prospective post.

This decision will be taken by the University and factors taken into account will include: -

- whether the conviction or other information is relevant to the post;
- the seriousness of any matter revealed;
- the length of time since it occurred;
- whether the applicant has a pattern of offending behaviour or other relevant matters;
- the applicant's circumstances since the offending behaviour/s.

If vetting information is found that **does** have a bearing on the individual's suitability to do regulated work, then it will be added to the record and will be examined by the Disclosure Scotland Protection Unit. While the membership is under consideration the individual will not be able to commence work with the University or undertake any regulated work activities.

Where an advertised post involves regulated work, it will be stated within the further particulars for the post and any other appropriate literature, and will include a statement that membership of the PVG Scheme is a requirement, in the event of the individual being offered the position and prior to commencing in the post.

If a successful applicant or existing member of staff is already a member of the PVG Scheme then the University will apply to Disclosure Scotland for a Scheme Record update or may apply for a new Scheme Record. Any associated fee will be paid by the employing Department.

5 Notification

The PVG Act requires members of the Scheme to notify Disclosure Scotland of any change of name or gender within three months of the change taking effect. It is the individual's responsibility to notify Disclosure directly, failure to do so, without reasonable excuse, is an offence. Other changes to personal information should also be notified to Disclosure Scotland, including current home address, telephone contact number and email address.

If an individual is a PVG member and subsequently leaves the University and is no longer doing regulated work then he/she should apply directly to Disclosure Scotland to leave the Scheme. Disclosure Scotland will seek confirmation of this from the University. Where the University has requested a Scheme Record or Scheme Record Update in respect of any individual, then it is assumed that we will continue to have an interest until such time as Disclosure Scotland is notified otherwise. When an individual ceases to do regulated work for the University we will de-register our

interest directly with Disclosure Scotland. Additionally any regulatory body whose registration number has been provided on an application form will also be assumed to have an on-going interest.

If an individual subsequently wishes to return to regulated work at the University or any other employer then he/she will require to undertake the full initial application process again.

If an individual considers the information recorded on the Scheme Record to be inaccurate then he/she can request a review of information from Disclosure Scotland but this must be undertaken within 3 months of the date of the scheme record being issued. Disclosure Scotland can provide more detailed information on the process should there be a dispute regarding accuracy. If the record is subsequently amended then a new Scheme Record will be issued.

It is an offence for an organization to either offer regulated work to someone who is barred or to fail to remove someone from regulated work if notified that they are barred. The University is entitled to use all vetting information to inform recruitment or retention decisions and will refuse to recruit or continue to employ an individual to do regulated work if they refuse to consent to PVG Scheme membership without reasonable grounds to do so.

PVG Scheme disclosure requests can only be used for regulated work; **for work that is not regulated** the University may request a basic or standard disclosure. Basic and Standard Disclosures are still available, and may be required for some roles within the University that are not regulated work. If this is required it will be published in the further particulars for the post. All Academic and Learning and Teaching roles will require a basic disclosure check.

The benefits of using basic or standard disclosure as part of our recruitment process include:

- Ensuring that inappropriate people are not selected
- Keeping staff and student safety at the centre of our recruitment policy
- Promoting a culture of transparency within the organisation

Basic Disclosure contains only convictions considered unspent under The Rehabilitation of Offenders Act 1974.

Standard Disclosure contains all conviction information, spent and unspent, including cautions.

6 Outwith Scotland

The PVG Scheme can only be used in respect of regulated work in Scotland. There is a similar scheme in England, Wales and Northern Ireland, which is the Safeguarding Vulnerable Groups Scheme (VBS). Someone undertaking regulated work in Scotland is required to join the PVG Scheme even where this results in them being members of both the PVG and the VBS Schemes.

Individuals recruited by the University from overseas to do regulated work in Scotland will be required to join the PVG Scheme. The same vetting will be undertaken by Disclosure Scotland from UK information sources. As information cannot be gathered from overseas, particular attention should be paid to thorough checking of identity, references, qualifications and work history. The Scottish Government is working to improve the exchange of conviction information with other European countries and non EU countries; however, the many different justice systems and policies on retaining conviction information make this a complex task that will take some time to come to fruition. Membership of the scheme will ensure that any new vetting information is received in the future.

7 Retrospective Checking and Re-Checking

From 28 February 2011 anyone who commences employment with Strathclyde University who is recruited to do regulated work will be required to join the PVG Scheme prior to commencing employment.

Existing staff who are undertaking regulated work will also be required to obtain PVG membership by February 2015. Disclosure Scotland will work with registered organisations to manage the process of phasing over the first four years.

An individual who is doing regulated work when barred will be committing an offence from 28 February 2011 and if this comes to light during the retrospective checking process the matter will be reported to the Police and could lead to prosecution.

8 Handling, Use, Storage and Retention of Information

The University will use PVG or Disclosure information only for the purpose for which it has been provided i.e., to determine suitability for regulated work or work for which the University requires a basic disclosure. The information provided by an individual for a position within The University of Strathclyde is not used or disclosed in a manner incompatible with the purpose. However, a PVG member may share their own disclosure record with another organization if they so choose.

The University will not retain Disclosure information on an individual's personal file. It is kept securely, in lockable, non-portable storage container. 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 or responsibilities.

9 Making a Referral to Disclosure Scotland

It is a requirement that employing organisations pass on information to Disclosure Scotland that indicates an individual may be unsuitable to do regulated work. On receipt of a referral Disclosure Scotland would evaluate and take any appropriate action.

The criteria for making referrals are:

- An individual doing regulated work has done something to harm⁵ a child or protected adult (but does not need to have taken place in the workplace or be connected with their work in any way)

and

- The impact is of such a serious nature that the University has (or would) permanently remove that individual from regulated work. If appropriate the University may also involve the police if criminal behaviour is suspected and this does not impinge on the process of making a referral to Disclosure Scotland.

The grounds of referral for those doing regulated work with children and or protected adults are:

- They have harmed a child or protected adult or
- Placed a child or protected adult at risk of harm⁶ or
- Engaged in inappropriate conduct involving pornography or

⁵Harm includes physical harm; psychological harm; unlawful conducts

⁶Risk of harm includes attempting to harm another; trying to get someone else to harm another; encouraging someone to harm themselves; conduct otherwise causing, or likely to cause, another to be harmed

- Engaged in inappropriate conduct of a sexual nature involving a child or protected adult or
- Given inappropriate medical treatment to a child or protected adult.

Examples of harmful behaviours include:

- Emotional abuse
- Neglecting a person's needs
- Inappropriate physical restraint
- Failing to attend to health and safety requirements
- Supplying illegal or unauthorized drugs

The information required by Disclosure to be included in a referral is based on what information is held by the University and does not require that the University makes any further or wider enquiries.

The information required includes:

- Identity details relating to the individual;
- Details about the referral ground/s
- Contact details for the referring organisation
- Details of the regulated work done by the individual
- Details of any relationship between the child or protected adult involved
- Details of any action taken by the University to date

Referrals are made using the referral form and guidelines provided by Disclosure Scotland to assist organisations.

On receipt of this information Disclosure Scotland will undertake an assessment process. If the person is a PVG member then any organisation that has requested a disclosure record in respect of the individual for regulated work will be notified, along with any appropriate regulatory body.

An individual is not barred by Disclosure Scotland from doing regulated work when they are under consideration for listing. In such circumstances a meeting will be held with the individual and risk assessment undertaken and if considered appropriate an individual may be removed from part or all of the duties during this period.

The Disclosure Scotland referral process is a separate process from any University formal Disciplinary procedures and the University may, if it considers it appropriate, progress formal disciplinary procedures at any time during the referral process, including dismissal prior to any listing decision being taken by Disclosure Scotland.

If the outcome of the consideration process is that the individual is placed on one or both lists then the University will be required to remove the individual from regulated work and would be committing an offence if it failed to do so.

Further information on the PVG Scheme and Disclosure Scotland are available at [The PVG Scheme](http://www.disclosurescotland.co.uk/pvg/pvg_index.html) (http://www.disclosurescotland.co.uk/pvg/pvg_index.html)