

Protecting Vulnerable Groups (PVG) Scheme & Disclosure Information Policy

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Governance Committee		Date approved	
Review date			

Strategic Alignment

Improving the Council's Resource Base – A Workforce Strategy that is built around the needs of the Council (as a single resource base) to deliver the priority outcomes, ensuring future workforce requirements, new skills and innovative approaches, and succession planning are recognised.

Consultation process		
Stakeholders	Contacts identified for each service	
	<i>Joint Trade Unions</i> <i>JNC for Teaching Staff</i> <i>Employee Equality Forum</i>	
Distribution		

Change record

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1. Introduction

On 28 February 2011 the Council implemented the requirements of the Protecting Vulnerable Groups (PVG) Scheme, the new Scottish vetting and barring scheme introduced by the Protection of Vulnerable Groups (Scotland) Act 2007. The PVG Scheme replaced, and improved upon, the previous disclosure arrangements for individuals who work with vulnerable groups (children and protected adults) and helps to ensure that those who have regular contact with children and/or protected adults do not have a known history of harmful behaviour. The scheme strikes a balance between proportionate protection and robust regulation.

The Council is committed to ensuring that it is fully compliant with the requirements of The Protection of Vulnerable Groups (Scotland) Act 2007, Part V of the Police Act 2007, and the Rehabilitation of Offenders Act 1974 (Exclusions & Exceptions) (Scotland) Order 2013, and subsequent amendment orders 2015 and 2016, in its recruitment and ongoing treatment of those individuals whose posts have been identified as requiring a criminal record check, in accordance with the definitions contained in the aforementioned legislation.

The policy provides the Council with the means of ensuring that the required checks have been carried out on individuals in identified posts to determine their suitability to undertake the full duties of the post, including 'regulated work' with children and/or protected adults, and the use of the PVG/Disclosure Information to inform recruitment decisions.

The policy also sets out the application process for both the PVG Scheme and Disclosure Checks and the position in relation to the secure handling, use, storage, retention and destruction of PVG/Disclosure Information.

The availability of PVG/Disclosure information should be seen as complementary to the Council's existing recruitment practices.

2. Scope

The policy applies to all individuals and Elected Members within the Council whose post/position/office has been identified as requiring PVG Scheme Membership or a Disclosure check, as well as recipients of PVG/Disclosure information, within the Council.

3. Principles

The PVG Scheme & Disclosure Information Policy aims to ensure that:

- The Council is making safer recruitment decisions, whilst complying with the relevant legislation and equality of opportunity;

- Any individual who is barred from doing regulated work with children and/or vulnerable adults is not employed to carry out regulated work for the Council;
- Individuals are not unfairly discriminated against on the basis of a conviction or other information revealed through the Disclosure process;
- The Council complies with the Code of Practice and the relevant legislation regarding the handling, holding, storage, destruction and retention of PVG/Disclosure information provided by Disclosure Scotland.

4. Legislation/Related Documents

This policy takes into account and incorporates those principles detailed within the:-

- The Protection of Vulnerable Groups (Scotland) Act 2007
- Part V of the Police Act 1997
- The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2016
- The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2015
- The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013
- Data Protection Act 1998
- Human Rights Act 1998
- Disclosure Scotland Code of Practice 2011
- The PVG Scheme Guidance for Employers

5. Roles and Responsibilities

Head of Business (Organisational and People Solutions)

The Head of Business (Organisational and People Solutions) shall be responsible for ensuring proper application of the policy across the Council in accordance with the relevant legislation and Disclosure Scotland Code of Practice. This shall include;

- ensuring that all those involved in the application of the policy have received the relevant training to enable them to make appropriate decisions;
- ensuring that Signatories understand their responsibilities in relation to the PVG/Disclosure information they receive;
- ensuring that posts requiring a criminal record check are robustly and consistently assessed to determine whether they fall within the definition of

regulated work, and update any changes accordingly, and that the list of Counter-Signatories across the Council is maintained,

- provision of reports to Committee as required on any updates to the list of posts in regulated work, as well as any changes to the PVG Scheme, and other related legislation.

Services

It is the responsibility of each Service to ensure that the appropriate level of criminal record check is carried out prior to any offer of employment being confirmed. The contract of employment should also detail the employee's responsibility in relation to the ongoing disclosure of new conviction information.

Services must also ensure that any information that is brought to their attention regarding an employee's suitability to carry out regulated work is addressed with the relevant Head of Service, and with Organisational & People Solutions, and action taken as appropriate.

Lead Signatory

A Lead Signatory should be a senior figure in the Council, with a level of management responsibility for those who make recruitment decisions. It is the responsibility of a Lead Signatory to ensure that they comply with the Code of Practice, including advising Disclosure Scotland of any changes to the registration details for the registered body, advising of any changes to countersignatories and ensuring that the annual fee for continued registration is paid (failure to pay the required registration fee may lead to the registration being suspended, and ultimately removed from the register).

Countersignatory

A Countersignatory should be a person who is suitable to receive Disclosure information. It is the responsibility of each Countersignatory to ensure that in signing any criminal record checks they have satisfied themselves as to the identity of the applicant through checking 3 forms of identity as detailed in the application form, and that the check is being requested for the purpose of enabling them to consider the applicants suitability to do, or be offered regulated work or other work as defined by the Part V of the Police Act 2007.

Individuals

It is the responsibility of each individual whose post/position has been identified as requiring a criminal record check to disclose, on an ongoing basis, and at the earliest opportunity, to their senior Manager, details of any criminal charges and/or convictions arising after the date of their most recent PVG/Disclosure check.

Individuals who cease to carry out regulated work for the Council should inform Disclosure Scotland to ensure that the Council is no longer registered as having an interest in that individual. When Disclosure Scotland receives such a notification they will seek confirmation from the Council before removing the Council as having an interest in the individual.

6. Regulated Work

The Protection of Vulnerable Groups Act defines regulated work by reference to the activities that a person does; the establishment in which a person works; the position that they hold and the people for whom they have day to day supervision or management responsibility. Outlined below are definitions of what is meant by 'regulated work'.

Regulated work with Children - the Act defines a child as an individual under 18 years of age. Regulated work with children is generally any work which involves responsibility for the welfare of a child.

Regulated work with Protected Adults – a protected adult is defined as an individual aged 16 or over who is provided with a type of care, support or welfare.

Further guidance for the purposes of assisting Services to identify posts that fall within the definition of regulated work is set out within the PVG Scheme Guidance for Employers

7. Levels of Criminal Record Checks

There are 3 levels of PVG checks under the scheme:

PVG Scheme Membership

PVG Scheme membership is required for individuals, who will be carrying out regulated work for the first time, whether new or existing employees.

PVG Scheme Record

A PVG scheme record will be required in the following circumstances;

- New or existing employee who already hold scheme membership but who will be carrying out regulated work for a different workforce for whom they are not registered – e.g. an employee already doing regulated work with children takes up a post working with protected adults.
- A scheme record update reveals a change to vetting information.

PVG Scheme Record Update

A PVG scheme record update will be required in the following circumstances:

- New employees who already hold scheme membership and are joining the Council to carry out regulated work for the same workforce which they hold membership for.
- Existing employees who already hold scheme membership, but are moving to a new post out with their existing Service, but for the same workforce they are already registered for.
- An existing scheme member who is re-joining the Council and there has been a gap of more than **3** months since last doing work for the Council (e.g. casuals, sessional, seasonal, volunteers).
- Existing employees who have been under consideration for listing but have not been barred from regulated work.

Further guidance on PVG Checks is set out in the PVG Scheme Guidance for Employers

Disclosure Checks

There are three types of disclosures that are still available for positions not in regulated work, as defined by Part V of the Police Act 1997 and The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Orders 2015 and 2016.

- Basic - this can be sought for any position that falls outwith regulated work or eligibility for Standard/Enhanced Disclosure Checks. However, there must be a proportionate aim to obtaining the information.
- Standard - available for positions which are exempt under the Rehabilitation of Offenders Act e.g. solicitors, accountants.
- Enhanced - available for positions which are exempt as above and also prescribed under the Police Act, such as prison officers, certain judicial or Crown appointments, etc

Further Guidance on the types of positions that are eligible for Standard or Enhanced checks can be obtained from Organisational & People Solutions.

8. Cost of PVG Membership/Disclosure Checks

The Council will meet the costs associated with PVG Membership and Disclosure Checks, including PVG Scheme Record updates and Full Scheme Records, for all individuals and Elected Members within the Council whose post/position/office has been identified as requiring PVG Scheme Membership or a Disclosure check

9. Referrals

The PVG Act places a duty on the Council to make referrals to Disclosure Scotland when an individual in regulated work has done something to harm a child or protected adult, or when the impact is so serious the Council has removed that individual from regulated work.

The PVG Act also places a duty on Disclosure Scotland to notify the Council when they are in receipt of information which has a bearing on an individual's suitability to carry out regulated work.

Further guidance on the process of making a referral is set out within the PVG Scheme Guidance for Employers.

10. Rehabilitation of Offenders

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013, as amended, sets out the legislation affecting ex-offenders, and offers them equality of opportunity when seeking employment.

In certain circumstances, once a period of time has elapsed from the date of conviction, a conviction is said to be spent and for the purposes of employment can be treated as if it never existed. Certain spent convictions will still need to be disclosed due to the serious nature of the offence.

The disclosure of unspent convictions will not change; however, the decision as to whether or not a spent conviction should be disclosed will be determined by a two-stage process.

Further guidance on the act and the disclosure of spent convictions can be found on the Disclosure Scotland website www.disclosurescotland.co.uk

11. Professional Registration

Scottish Social Services Council (SSSC)

SSSC carry out their own PVG checks on those individuals in regulated work who require to be registered with SSSC, to ensure "fitness to practice". This is in addition to any PVG

information that the Council requires to ensure those individuals are “fit” to carry out regulated work in the post.

General Teaching Council (GTC)

Probationary Teachers will have obtained PVG membership as part of their registration on the probationary programme, therefore, the employing Service will only need to obtain the relevant PVG scheme updates.

Most qualified Teachers will only require scheme record updates to be obtained, however there may be occasions where full PVG scheme membership is required (i.e teachers out with the Scottish Education system, teachers who have not taught since the implementation of PVG) and the employing Service will be responsible for ensuring this is obtained.

12. Disclosure of Conviction Information

As detailed above, any individual whose post/position requires any level of criminal record check (PVG or Disclosure) are required to disclose, on an ongoing basis and at the earliest opportunity, to their senior Manager, details of any and all criminal charges and/or convictions arising during the course of their employment.

PVG Scheme Members

The PVG Scheme offers a continuous updating facility, wherein, should an individual whilst a member of the scheme commit an offence that leads to barring or consideration for barring then the Council as an interested party will be automatically informed.

Consideration for Listing

If notification is received that an individual is under consideration for listing, the Service must discuss the matter with the individual and determine whether it is necessary to remove the individual from their post/position until such times a determination is made by Disclosure Scotland as to whether the individual will be barred from regulated work.

There is no legal requirement to remove an individual from regulated work during the consideration process, therefore each case will be dealt with on its own merit, and the action taken will depend on the circumstances and the nature of the work undertaken by the individual.

If the outcome of the consideration process is that the individual is not barred from regulated work, Services will need to obtain a Scheme Record Update to assess whether the consideration process has resulted in any new vetting information about the individual.

Barring

Where the Council is notified that the individual has been barred from regulated work, immediate steps should be taken to remove the individual from their post/position. Barring is most likely to happen where an individual has been referred by another organisation (i.e. courts, regulatory bodies, NHS tribunals).

Re –Checking of Basic/Standard/Enhanced Disclosures

There is no automatic notification process on convictions to employers in relation to individuals who have Basic/Standard/Enhanced Disclosure checks, and there is no legislative requirement to carry out re-checking of these individuals. Re-checking of these Disclosure Checks will be carried out every 3 years.

13. Secure Handling of Information

PVG/Disclosure information should be handled, used, stored, retained and disposed of in accordance with the legislation listed above.

Usage

PVG/Disclosure Information should only be used for the purposes for which it has been provided, which is to determine suitability for employment, and only shared with those authorised to see it in the course of their duties. It should not be shared with a third party unless written consent has been given by the applicant.

Storage/Retention

PVG/Disclosure Information should not be held for longer than necessary. For PVG checks information should be held until the individual ceases to do regulated work for the Council. For Disclosure Checks, the information should only be retained until a recruitment decision is reached, allowing for the resolution of any disputes or complaints. Information being held until a recruitment decision is made, should be held securely, in lockable, non portable storage containers.

Once a recruitment decision has been made, paper or electronic certificates should not be retained; rather, the relevant information (disclosure type, position applied for, date of issue, reference number) must be recorded on the HR System, and care must be taken to avoid unauthorised access. No criminal conviction information should be retained, nor should it be recorded that a check did or did not contain criminal conviction information. Furthermore, no information should be held on the employee's personnel file.

Disposal

PVG/Disclosure information must be destroyed in a secure manner. Any Disclosure information awaiting destruction should be held securely, in lockable, non portable storage containers.

14. Violations of the Policy

Any violation of the Policy may result in disciplinary action in terms as specified in the Council's Discipline Policy up to and including dismissal. Violations could also amount to criminal offences and lead to prosecution.