

# PROTECTING VULNERABLE GROUPS (PVG) SCHEME AND DISCLOSURE POLICY

## STATEMENT

The Protecting Vulnerable Groups Scheme (PVG Scheme) is established by the Protection of Vulnerable Groups (Scotland) Act 2007.

The PVG Scheme replaces enhanced disclosure for individuals working with vulnerable groups.

The three types of disclosures under the 1997 Act (enhanced, standard and basic) are still available for positions not within the scope of the PVG Scheme.

## 1. INTRODUCTION

Perth and Kinross Council is a registered body with Disclosure Scotland, handling disclosed information about employees and prospective employees and as such must comply with Disclosure Scotland's Code of Practice.

The PVG Act allows Perth and Kinross Council, as a registered body, to request and obtain information on whether an individual has any relevant criminal convictions and whether or not they are barred from doing regulated work with children or protected adults.

The Council's approach to the PVG Scheme application process, its use of PVG Scheme information to inform decisions, and the storage, appropriate period of retention and destruction of PVG Scheme information is set out in this policy. The Policy also clarifies how the PVG Scheme relates to Basic, Standard and Enhanced Disclosure checks for posts not carrying out regulated work.

Perth and Kinross Council is committed to ensuring its recruitment and selection practices are fair and comply with current employment legislation and best practice. The Council also recognises its legal obligation to carry out the necessary checks in respect of employees, prospective employees, volunteers and foster carers, who will be working with children or protected adults. The fact that an individual has a conviction will not necessarily make them unsuitable for work with the Council and a person's suitability as a whole in light of all the information available will be considered. However the Council cannot lawfully employ an individual to do regulated work of the type they are barred from doing.

The Council is committed to equality of opportunity and aims to ensure that no employee or prospective employee is subject to less favourable treatment on the grounds of age, disability, race, sex, gender reassignment, marriage and civil partnership, pregnancy and maternity, sexual orientation, religion or belief or any characteristic which cannot be shown to be relevant to performance.

This Policy applies to all employees and prospective employees of Perth and Kinross Council, volunteers and foster carers who carry out regulated work or who are covered by the Police Act 1997. Where prospective employees are foreign nationals or have spent time abroad, reference should also be made to the How to Guide – Overseas Criminal Record Checks on *eric*.

## **2. KEY PRINCIPLES OF THE POLICY**

The Council recognises its legal obligations to carry out necessary checks to ensure that those undertaking regulated work are not barred from doing so. The Council cannot by law employ someone to do regulated work of a type from which they are barred. The Council will seek information from Disclosure Scotland, through the PVG Scheme or through a Basic, Standard or Enhanced Disclosure check, depending on the role, to make informed decisions on an individual's suitability to carry out the proposed work.

- Where a post constitutes regulated work with children, the Council is permitted to request a check against the list of persons barred from working with children.
- Where a post constitutes regulated work with protected adults, the Council is permitted to request a check against the list of persons barred from working with protected adults. NB Only when it has been established that an individual/individuals are protected adults because of the service being received and that the person providing the service is doing regulated work, can the authority go on to consider whether the person providing the service must apply to join the PVG Scheme.
- External service providers are responsible for ensuring their staff who undertake regulated work with children or vulnerable adults are members of the PVG scheme. The Council will check that those external service providers who are carrying out regulated work within its establishments are members of the PVG scheme.
- The Council will comply with the Code of Practice and other guidance issued by Disclosure Scotland in dealing with requests for and in making decisions on PVG Scheme/ Disclosure information. All Disclosure Assessment forms will be counter-signed by the Corporate Human Resources Manager or another named authorised counter signatory.
- The Council will only use PVG Scheme/Disclosure information for the purposes for which it has been provided.
- The Council will have regard to any guidance issued by Disclosure Scotland on the use, storage and destruction of this information.
- The Council will not unfairly discriminate against an individual on the basis of a conviction or other information revealed through the disclosure process.

- For regulated work, the terms of the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (as amended) apply. The Council is therefore entitled to ask about previous convictions, whether spent or unspent. Applicants are not entitled to withhold information on a criminal conviction on the grounds that it is spent under the Rehabilitation of Offenders Act 1974.
- Having an unrelated criminal conviction will not necessarily debar an individual from a post or role within the Council. This will depend on the nature of the position and the circumstances and background of the offence or other information contained on a PVG Scheme Record or Disclosure Certificate or information provided directly to the Council by a Police Force.
- In such cases where a criminal conviction has been brought to the Council's attention through a PVG Scheme Record/Basic Disclosure check, the Council's Disclosure Panel will consider;
  - Whether the individual is barred from undertaking regulated work of the type proposed.
  - Whether the conviction or other matter is relevant to the position in question.
  - The severity of the offence or other matter.
  - The length of time since the offence or other matter.
  - Whether the individual has a pattern of offending behaviour.
  - Whether the applicant's circumstances have changed since the offending behaviour or other matters.
  - The level of contact with children or protected adults.
  - The level of supervision the person will receive.
  - The employment track record.
  - The supporting statement requested from the employee.
- The Council will only share disclosed information with those who legitimately need to see it. The Council Disclosure Panel will consider any information revealed in a PVG Scheme Record or letter/Basic Disclosure Certificate and will request a supporting statement from the individual before considering withdrawing a conditional offer of employment or taking further action.
- In such cases where information is brought to the Council's attention, by the individual or other, which indicates an individual may be unsuitable to do regulated work (and where we have removed or would have removed the individual from regulated work) this information must be passed on to Disclosure Scotland. This will allow Disclosure Scotland to properly evaluate the information and take appropriate action. The process of providing such information to Disclosure Scotland is called "making a referral" and must be completed within 3 months of the criteria being met. The referral process will be managed by the appropriate Senior Human Resources Officer and referrals will be signed off by the Corporate Human Resources Manager. In the case of foster carers, the referral process will be managed by the Head of Children and Families Services and signed off by the Chief Social Work Officer. Notification of all referrals made to Disclosure Scotland (and any other relevant bodies) will be sent to the Council's Disclosure Panel for information.

- The Council will ensure that all PVG Scheme/other Disclosure information will be stored securely, in lockable and non-portable storage. Access shall be restricted to authorised persons only. In line with the Data Protection Act 1998, personal information will be kept only for as long as it is required for the purposes for which it was obtained. The Council will not retain disclosure information for longer than it is relative to their needs. This may be the date on which recruitment or other relevant decision has been taken or after the date on which any dispute about the accuracy of the disclosure information has been resolved. The PVG/Disclosure reference number and date of checks made will be retained on personal data records and may be used as evidence that appropriate checks have been carried out.
- The Council will ensure that disclosure information is destroyed in a secure manner i.e. by shredding, pulping or burning. Disclosure information awaiting destruction will be kept in a secure receptacle.
- Disclosure Scotland may carry out compliance audits to ensure the Council is complying with the Code of Practice and legislative requirements governing the application for and use of PVG Scheme/Disclosure Information.
- PVG Record Updates may be considered a requirement by the Council, on a rolling basis, for employees who continue to require PVG Scheme membership, once the Scheme has been fully embedded and reviewed.

### **3. ROLES and RESPONSIBILITIES**

The Corporate Human Resources Manager is responsible for ensuring the proper application of the policy terms. This shall include the provision of relevant training to those involved in recruitment and selection activities and to Lead and Counter-Signatories who are entitled to receive PVG/Disclosure Scotland information and any other relevant criminal history information.

The Lead Signatory and Counter-Signatories who receive PVG Scheme/Disclosure information and any other relevant criminal history information will be responsible for ensuring the safe keeping, proper use and destruction of that information, in accordance with the Disclosure Scotland Code of Practice, PVG Guidance and Council policy and procedures.

It is the responsibility of the employee/prospective employee, volunteer or foster carer to ensure a full and proper disclosure of information to inform the Councils decisions and assessment of PVG/Disclosure information. They must:

- agree to become a member of the PVG Scheme if they are or will be carrying out Regulated work.
- provide a supporting statement to the Council where “disclosed information” has been received from Disclosure Scotland.
- pass on to the Council, as soon as possible, any information which may affect their role and/or their membership of the PVG Scheme

Failure to comply with the Policy could result in disciplinary action which could, in turn, result in dismissal. In relation to volunteers and carers this could result in the Council terminating your approval or registration, where appropriate.

#### **4. OTHER DISCLOSURE CHECKS**

It is illegal for an employer to obtain a PVG Record unless this relates to regulated work carried out/to be carried out by an individual.

The three types of disclosure under the 1997 Act are still available for positions not within the scope of the PVG Scheme. Basic disclosure checks will be carried out for all new starts to comply with Public Service Network (PSN) requirements. Standard disclosure continues to be available for specific prescribed positions. Enhanced disclosure continues to be available for those posts involving access to children or protected adults, carrying out unregulated work.

#### **5. RELEVANT LEGISLATION**

Protection of Vulnerable Groups (Scotland) Act 2007 (The “PVG” Act) and related legislation.

Data Protection Act 1998

The Police Act 1997 Part V section 122

Rehabilitation of Offenders Act 1974

Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (as amended)

Regulation of Care (Scotland) Act 2003

#### **6. REVIEW**

The Protecting Vulnerable Groups (PVG) Policy will be monitored and reviewed on a regular basis to ensure it continues to meet the needs of the Council and to ensure compliance with relevant legislation.