

UNIVERSITY OF ABERDEEN

Protection of Vulnerable Groups Policy

1. Policy Statement

The University is committed to providing a safe and protected environment for its staff and students at all times.

We comply fully with relevant legislation and statutory guidance to ensure that, where relevant, employees and students are members of the Protection of Vulnerable Groups Scheme (PVG Scheme) which was introduced by the Protection of Vulnerable Groups (Scotland) Act 2007.

2. Principles

This policy is guided by the following principles:

- We will carry out checks only where they are necessary and required by law
- Information will be processed and handled sensitively and confidentially, ensuring full compliance with Data Protection Legislation (Appendix D)
- We will adhere to the Code of Practice as issued by Scottish Ministers under Part V of the Police Act 1997
- Having a criminal record will not necessarily prevent employment or matriculation at the University. This will depend on the nature of the position, together with the circumstances, timescales since the offence(s) was committed, and nature of the offence(s) (Appendix C).

3. Background

The Protection of Vulnerable Groups (Scotland) Act 2007 came into effect on 28th February 2011. The legislation makes it an offence for an organisation to employ a person to undertake regulated work who is barred from working with children and/or protected adults and for an individual to put themselves forward for regulated work whilst barred.

Within the Act, the following definitions apply:

Children - Individuals who are under the age of 18

Protected Adults - Individuals aged 16 or over who are provided with a registered care service, health service, community care service, or a welfare service

There are two types of regulated work (paid or unpaid):

- Regulated work with Children
- Regulated work with Adults

It is not possible to provide a definitive list of roles, positions, or types of employment or study that constitute regulated work, however the PVG Act defines regulated work by reference to:

'The activities that a person does; the establishments in which a person works; the position that they hold; or the people for whom they have day-to-day supervision or management responsibility'

4. How to assess whether work is regulated?

Disclosure Scotland has confirmed that Higher Education Institutions are included within the Protection of Vulnerable Groups legislative framework. However, not all individuals who come into contact with children or Protected Adults through their work or studies are doing regulated work under the terms of the Act. Therefore, only University employees/students who are deemed to be undertaking regulated work as part of their normal duties with children/Protected Adults will require PVG Scheme Membership.

There are five steps to assessing whether an individual is doing regulated work. This involves the consideration of:

- Is it work?
- Who are they working with?
- What do they do?
- Is it their normal duties?
- Are there any exceptions which apply?

Under the 2007 Act the University is not a specified establishment and therefore it is not required to carry out checks on all of its employees. In most cases the 'incidental' exception will apply as on average the University admits only a small proportion of students under 18 years of age each year, and the proportion of students deemed to be 'protected adults' will mean that staff contact with these individuals will in the main be 'incidental' to the main employment duties.

Examples of the types of employment role where it may be appropriate for the post-holder to have PVG Scheme membership are attached as Appendix A. Disclosure Scotland has provided guidance to the Higher Education sector on the types of roles within universities that will be covered by the Act; Human Resources will work with the relevant Schools/Sections to identify any posts that will require Scheme membership in addition to those which are listed. This will be particularly important for any new roles within the University.

For students undertaking relevant degree programmes within the School of Medicine, Medical Sciences and Nutrition and the School of Education that require regulated activity, there is also a requirement to have PVG Scheme Membership as a condition of entry onto the degree programme. New degree programmes will be assessed to ensure students undertaking regulated activity as part of their studies gain PVG Scheme Membership as appropriate.

5. The PVG Scheme

Individuals who work on a regular basis with children and/or Protected Adults will join the PVG Scheme and from then on their membership records will be automatically updated and their employer(s) notified if new information is received (e.g. if they become under

consideration for inclusion on the list of individuals who are barred from working with regulated groups).

There are two types of check available:

PVG Scheme Record:

A PVG Scheme Record can be requested by an employer who is employing an individual to do regulated work when the individual is joining the PVG Scheme for the first time. The Scheme Record certificate is not specific to one post and is also portable between employers.

The Scheme Record certificate is a document containing impartial and confidential information held by the police and government departments which can be used by employers to make safer recruitment decisions ('vetting information'). It also includes:

- Confirmation that the individual is not barred from (or is under consideration for being barred from) regulated work with children and/or Protected Adults, as appropriate
- Spent and unspent convictions held on central records
- Certain non-conviction information which a Chief Constable may choose to disclose should s/he deem it to be relevant to the position sought

PVG Scheme Record Update:

A PVG Scheme Record Update can be requested by an employer who is recruiting an existing PVG Scheme member for the first time. The purpose of the Update is to enable employers to check that a potential employee is a PVG Scheme member and is not barred from working with vulnerable groups. This certificate will highlight the existence (but not full details) of any previous vetting information or new information which has become available since the individual joined the Scheme.

6. Recruitment

6.1 Staff

Recruitment documents for posts which require the post-holder to undertake duties which fall within the scope of the Act will state that any offer of appointment will be conditional on confirmation of a satisfactory PVG Scheme record check. The offer of appointment will be made subject to such confirmation being received.

6.2 Students

For students that will undertake duties which fall within the scope of the Act any offer of study will be conditional on confirmation of a satisfactory PVG Scheme record check. The cost of the PVG Scheme record must be met by the student.

The University will require all new employees or students, or those who are transferring within the University to a new role or degree programme which involves undertaking

duties which fall within the scope of the Act, to undertake a satisfactory PVG Scheme Record check as per the below

6.3 Individuals who are already Scheme members

In some cases, individuals may already be members of the PVG Scheme if it has been required of them by another university, employer or for voluntary work which they undertake. In such circumstances, a PVG Scheme Record Update will be requested in the first instance if the workforce membership matches :e.g. they are a member of the children's workforce and the work at the University will also be with children.

If the Update highlights that vetting information exists, the individual will be asked to provide a copy of their full Scheme Record. Additionally if the Update indicates that new 'vetting' information has been added since the individual's most recent full Scheme Record was produced, a further full PVG Scheme Record check will be requested.

A full PVG Scheme Record will also be required when the workforce membership type differs e.g. they are a member of the children's workforce and the work at the University will be with Protected Adults.

6.4 Individuals who are not already Scheme members

The University will require them to join and will provide assistance to the individual during the application process.

7. Obtaining PVG Scheme Membership

Only Registered Bodies can access Scheme Records and Scheme Record Updates. The University holds Registered Body status. The University is permitted one designated Lead Signatory, and a number of Counter-signatories within Human Resources and Schools who will initiate and complete the process of obtaining the Scheme membership confirmation.

7.1 Staff

When the successful candidate for the post has been identified, the oral and written offer of employment will be made subject to receipt of a satisfactory PVG Scheme Record check. The formal offer will include details of the documentation required from the candidate to allow the PVG check to be undertaken. Once this is received by the Counter-signatory an online PVG Scheme application form will be generated. This will be sent automatically by Disclosure Scotland to the candidate for completion.

Disclosure Scotland will then carry out the necessary checks and return the PVG Scheme Record check to the Human Resources Office. A copy of the certificate will also be sent to the individual concerned.

7.2 Students

When a successful applicant to a relevant degree programme has been identified, the offer of a place will be made subject to receipt of a satisfactory PVG Scheme Record check. The formal offer will include guidance of the documentation and information required to allow the PVG check to be undertaken.

Once this is received by the Counter-signatory an online PVG Scheme application form will be generated. This will be sent automatically by Disclosure Scotland to the student for completion.

Disclosure Scotland will then carry out the necessary checks and return the PVG Scheme Record to the School. A copy of the certificate will also be sent to the individual concerned.

8. Commencing Employment

No individual will be able to undertake any form of regulated work (whether supervised or not) for the University until the appropriate PVG check has been undertaken and either a full Scheme Record Check or Scheme Record Update have been received by the University.

This may mean a delay in the commencement of employment for those staff employed to undertake regulated work, and it will be the responsibility of Human Resources to ensure that any affected individuals are kept fully informed about any potential delays.

9. Temporary Services Staff

Heads of School/Section who employ Temporary Services staff are responsible for ensuring that appropriate PVG Scheme checks have been undertaken where required for all those who are employed on this basis prior to them taking up the position. Similar arrangements should also be made for self-employed individuals who are paid outwith this route on the submission of invoices. Further guidance on this can be obtained from Human Resources.

No individual will be able to undertake any form of regulated work (whether supervised or not) for the University until the appropriate PVG check has been undertaken and either a full Scheme Record Check or Scheme Record Update has been received by the Human Resources department.

10. Changes to Individual Circumstances

PVG Scheme members are required to notify Disclosure Scotland when they leave the University e.g. As the result of a resignation, retirement or the conclusion of their studies.

In addition it is best practice for organisations to also update Disclosure Scotland of any leavers. It is the responsibility of HR to ensure that this notification is sent (if applicable) as part of the standard leavers process for staff. For students this will be undertaken by their School.

11. Referrals to Disclosure Scotland

The PVG Act aims to provide a robust system by which unsuitable people are prevented from undertaking regulated work with children or Protected Adults and by which people who become unsuitable are identified. The process of providing such information to Disclosure Scotland is called "making a referral". The PVG Act places a legal duty upon the University to report any harmful behaviour that may affect whether the person is allowed to work with children or protected adults.

An individual's conduct warrants a referral to Disclosure Scotland if it meets two criteria:

11.1 The 'Grounds'

The individual's harmful behaviour must match one the referral grounds laid out in Section 2 of the PVG (Scotland) Act 2007:

- Harmed a child or protected adult
- Placed a child or protected adult at risk of harm
- Inappropriate conduct involving pornography
- Inappropriate conduct of a sexual nature involving a child or protected adult
- Given inappropriate medical treatment to a child or protected adult.

There are a number of different ways that 'harm' can be defined. Examples of harm include: Physical, Sexual, Psychological, Theft, Verbal.

11.2 The 'When'

A referral must be made when an individual's harmful behaviour (i.e. the grounds) meant that the person involved:

- Was dismissed as a result **or**
- Would have been dismissed but left before they could be **or**
- Was transferred permanently away from work with children or protected adults

If both criteria are met, a referral to Disclosure Scotland will be made by the Lead Counter signatory. It is an offence for the University not to make a referral within 3 months of the criteria for referral being met.

The duty to refer exists even in there is involvement from the police, professional regulators or other organisations.

Further information on the referrals process can be accessed at

12 Exploring the Relevance of Disclosure Information

The Human Resources Adviser or School staff will make an initial assessment of the content of the PVG Scheme Record or PVG Scheme Record Update. Where no evidence of convictions or any other related information is provided, the individual will receive a letter confirming appointment or offer.

If the certificate confirms that the individual is barred from working with children and/or Protected Adults, the offer of employment or study will be withdrawn.

If the certificate confirms that the individual holds a conviction or any other related information, Human Resources will for staff make an initial assessment of whether the information provided has any potential relevance to the post offered. In such circumstances each case will be given individual consideration and further exploration may be required to determine whether or not the applicant can still be appointed to the position. Human Resources will discuss the certificate with the applicant, the convenor of the Selection committee and Head of HR. The aim will be to achieve a structured, open and honest discussion between all parties.

The suitability for employment or study of a person with a criminal record or who has other relevant information revealed in their check will vary. It will depend upon the nature of the job or study and the details and circumstances of any conviction or relevant information. The discussion should cover these matters, in order that the applicant's criminal record or other relevant information and circumstances can be assessed in relation to the tasks he or she will be required to perform, and the circumstances in which the work is to be carried out. It should be remembered that no two offences are exactly alike and should not be treated so.

The following factors are likely to be relevant in considering the certificate:

- The nature of the conviction or relevant information and its relevance to the safety of other employees, students, the public etc.
- The seriousness of any offence revealed
- The length of time since this occurred - is it many years since the conviction took place or is it recent?
- The number of convictions – do the convictions show a pattern of criminal behaviour or offending?
- Any relevant information offered by the applicant about the circumstances
- The degree of remorse or otherwise expressed by the applicant and their motivation to change
- Are the applicant's references satisfactory?

Having considered all these matters carefully and thoroughly, a decision can then be taken as to whether the applicant should be appointed and, thereafter, the individual will be formally informed of the decision in writing.

Further information on the University's policy on the recruitment of ex-offenders is attached as Appendix C.

For students, if the certificate confirms that the individual holds a conviction, or any other related information, this will be referred to the relevant programme lead, who will consider the information in line with the above criteria.

13 Right of Appeal

13.1 Offer of Employment Withdrawn

In circumstances where an offer of employment is withdrawn as a result of information contained within a PVG Scheme Record certificate being received, the individual concerned will have the right of appeal against this decision.

The intention to appeal should be lodged, in writing, with the Director of People within ten working days of receiving the decision.

The appeal hearing will be convened by a Head of School/Section, who will sit with the Director of People (or an alternative senior manager within the University not previously involved in the selection process) within 20 working days of the written appeal being received. None of the Appeals Committee members will have been involved in the selection process.

Regulated Positions

Not all individuals who come into contact with children or Protected Adults through their work are doing regulated work under the terms of the Act. Therefore, only University employees/ students who are deemed to be undertaking regulated work with children/ Protected Adults will require PVG Scheme Membership.

Individuals who are employed to conduct activities for all students are not deemed to be in a Regulated Position in relation to work with children.

In relation to working with Protected Adults, posts which require individuals to provide a “welfare service” i.e. a service which provides support, assistance, advice or counseling to individuals with particular needs, will be considered as being a Regulated Position.

The service must be a service that:

- Is provided in the course of work to one or more persons aged 16 or over
- Is delivered on behalf of the University
- Requires training to be undertaken by the person delivering the service
- Has a frequency and formality attached to the service
- Is personalised to individual adults needs OR requires a contract to be signed between the service provider and the recipient of the service prior to the service being carried out.

It should be noted that an individual is only a Protected Adult at the time they receive the service.

Broadly speaking the following posts constitute regulated work and the individuals performing them will need to be PVG Scheme members:

Work with Children

- Staff who may be involved in events organised for children or school visits
- Sports Attendants involved in delivering activities provided for children
- All staff who are required to work in schools where that work provides an opportunity for unsupervised contact with children as part of the normal duties of the role.
- Rocking Horse Nursery manager
- Academic staff who have responsibility for the provision of advice and guidance primarily to first year undergraduate students
- Students undertaking work for their course that involves undertaking an ‘activity’ under the PVG Act (listed in Appendix B) with children

Work with Protected Adults

- Counsellors within the Counselling Service (if providing a welfare service)
- Chaplaincy staff (if providing welfare service)
- Non-Medical Personal Assistants (if providing welfare service)
- Disability Advisors (if providing welfare service)

- Students undertaking work for their course that involves undertaking an 'activity' under the PVG Act (listed in Appendix B) with protected adults

Work with Children and Protected Adults

- Clinical Academic staff who undertake clinical duties
- Research Nurses with unsupervised one-to-one contact with Children and/or Protected Adults and/or who undertake clinical duties
- Students undertaking work for their course that involves undertaking an 'activity' under the PVG Act (listed in Appendix B) with children and protected adults

This is not an exhaustive list and it is important that Heads of Schools/Sections, in conjunction with the Human Resources Advisers/ Recruitment Team regularly review and re-visit the content of posts to see if they involve regulated work. It is mandatory that all new posts are assessed prior to the start of any recruitment process.

Requiring an employee to be a PVG Scheme member is sensitive in nature and can be open to challenge. It is therefore imperative that all decisions are justifiable, and that it is clear from the job description what the expected duties are, the likely frequency which they occur, and if they constitute 'regulated work' under the 2007 Act.

It is an offence to require an individual to apply for PVG Scheme membership when they are not carrying out 'regulated work' under the 2007 Act.

Activities under the Protection of Vulnerable Groups (Scotland) Act 2007

Protected Adults:

- Caring for protected adults
- Teaching, instructing, training or supervising protected adults.
- Being in sole charge of protected adults.
- Providing assistance, advice or guidance to a protected adult or particular protected adults which relates to physical or emotional wellbeing, education or training.

Inspecting adult care services (including inspecting any premises used for the purposes of providing such services).

Children

- Caring for children
- Teaching, instructing, training or supervising children.
- Being in sole charge of children.
- Unsupervised contact with children under arrangements made by a responsible person.
- Providing advice or guidance to a child or to particular children which relates to physical or emotional well-being, education or training.
- Moderating a public electronic interactive communication service which is intended for use wholly or mainly by children.
- Providing, or working for an organisation which provides, a care home service which is provided exclusively or mainly for children.
- Providing, or working for an organisation which provides, an independent health care service which is provided exclusively or mainly for children.
- Work on any part of day care premises at times when children are being looked after in that part.
- Being a host parent.

For establishments, the criteria are below for children and slightly varied definition for protected adults)

Children

A position—

- (i) which is not a position mentioned in sub-paragraph (a) (*i.e. not doing an activity*),
- (ii) whose normal duties include work in an establishment mentioned in Part 3, and
- (iii) which gives the holder of the position, when doing anything permitted or required in connection with the position, the opportunity to have unsupervised contact with children,

“unsupervised contact with children” means contact with children in the absence of—

- (a) a responsible person;*
- (b) a person carrying out an activity mentioned in paragraph 3, 4 or 5; or*
- (c) an individual who, in relation to a child, has agreed to supervise the contact under arrangements made by the child’s parent or guardian or any person aged 18 or over with whom the child lives in the course of a family or personal relationship,*

“responsible person” means, in relation to a child, any of the following persons—

- (a) the child’s parent or guardian;*
- (b) any person aged 18 or over with whom the child lives;*
- (c) the person in charge of any establishment mentioned in Part 3 in which the child is accommodated, is a patient or receives education (and any person acting on behalf of such a person);*
- (d) a person who provides day care of children, within the meaning of schedule 12 to the 2010 Act ~~section 2 of the 2004 Act~~; [Public Services Reform (Scotland) Act 2010 (Consequential Modifications) Order 2011 Sch 1, Part 1, para 19(c) (SSI 2011 No 211)]*
- (e) any person holding a position mentioned in Part 4; and*
- (f) a charity trustee of a children’s charity, within the meaning of paragraph 27,*

“family relationship” and “personal relationship” have the meanings given in section 95.

Protected Adults

- (a) a position—*
 - (i) which is not a position mentioned in sub-paragraph (a) (i.e. not doing an activity),*
 - (ii) whose normal duties include work in an establishment mentioned in Part 3,*
 - (iii) which gives the holder of the position, when doing anything permitted or required in connection with the position, the opportunity to have unsupervised contact with protected adults, and*
 - (iv) where contact with protected adults, when the holder of the position is doing anything permitted or required in connection with the position, is more than incidental,*

“Unsupervised contact with protected adults” means contact with protected adults in the absence of an individual doing regulated work within the establishment where the contact takes place.

- For day to day line manager/supervisor, the criteria are a position whose normal duties include the day to day supervision or management of an individual doing regulated work with children or protected adults by virtue of undertaking an activity or through working in an establishment.
- Positions of trust are listed [here](#) for children and [here](#) for protected adults

THE RECRUITMENT OF EX-OFFENDERS

The Code of Practice (“the Code”) is published by Scottish Ministers under section 122 of Part V of The Police Act 1997 (“the 1997 Act”). The Code identifies obligations which registered bodies, counter-signatories and other recipients of disclosure information issued under the 1997 Act and the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”).

We comply with the Code, the 1997 and 2007 Acts regarding the treatment of individuals who are subject to Disclosure Scotland checks. We undertake not to discriminate unfairly against the subject of a disclosure on the basis of conviction or other information revealed.

Having a criminal record will not necessarily prevent an individual from working at the University of Aberdeen. This will depend on the nature of the position and the circumstances and background of the offence(s).

We are committed to equality of opportunity, and to following practices which are free from unfair and unlawful discrimination. We ensure that no applicant or member of staff is subject to less favourable treatment on the grounds of offending background. We welcome applications from a wide range of candidates, including those with criminal records and the selection of candidates for interview will be based on skills, qualifications and experience.

We will only use a Disclosure Scotland check where this is considered proportionate and relevant to the particular position or type of regulated work. This will be based on a thorough assessment of the position or work, and in consideration with the relevant legislation.

Where a disclosure application or request is deemed necessary, individuals will be made aware that the position or work will be subject to a Disclosure Scotland check and that the nature of the position or work entitles us to ask about spent and unspent convictions

For the majority of posts, the University will only consider ‘unspent’ convictions as defined in the Rehabilitation of Offenders Act 1974. However where the post involves contact with children or Protected Adults, the University is entitled to consider the applicant’s entire criminal record including unspent convictions and other relevant information obtained through the PVG Record Scheme check.

Where an applicant fails to reveal information that is directly relevant to the position sought, this may lead to withdrawal of an offer of employment. Action may also be taken under the appropriate procedures against an existing member of staff, where it is discovered that s/he has failed to reveal information directly relevant to the position held.

POLICY ON THE SECURE HANDLING, USE, STORAGE, RETENTION AND DESTRUCTION OF DISCLOSURE INFORMATION

1. Introduction

The Code of Practice (“the Code”) is published by Scottish Ministers under section 122 of Part V of The Police Act 1997 (“the 1997 Act”). The Code sets out obligations for registered bodies, counter signatories and other recipients of disclosure information issued under the 1997 Act and the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”).

2. General Principles

We comply with the Code and the 1997 and 2007 Acts regarding the handling, holding, storage, destruction and retention of disclosure information provided by Disclosure Scotland. We comply with the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018. We will provide a copy of this policy to anyone who requests to see it.

3. Usage

We will use disclosure information only for the purpose for which it was requested and provided. Disclosure information will not be used or disclosed in a manner incompatible with that purpose. We will not share disclosure information with a third party unless the subject has given their written consent and has been made aware of the purpose of the sharing.

4. Handling

We recognise that, under section 124 of the 1997 Act and sections 66 and 67 of the 2007 Act, it is a criminal offence to disclose disclosure information to any unauthorised person. Disclosure information is only shared with those authorised to see it in the course of their duties. We will not disclose information provided under subsection 113B (5)2 of the 1997 Act, namely information which is not included in the certificate, to the subject.

5. Access and Storage

We do not keep disclosure information on an individual's personnel file. It is kept securely, in lockable, non-portable storage containers. Access to storage units is strictly controlled and is limited to authorised named individuals, who are entitled to see such information in the course of their duties. The same applies to such information stored electronically, which is kept within access-restricted secure shared drives.

6. Retention

To comply with data protection legislation, we do not keep disclosure information for longer than necessary. For the 1997 Act, this will be the date the relevant decision has been taken, allowing for the resolution of any disputes or complaints. For the 2007 Act, this will be the date an individual ceases to do regulated work for this organisation. We will not retain any paper or electronic image of the disclosure information. We will,

however, record the date of issue, the individual's name, the disclosure type and the purpose for which it was requested, the unique reference number of the disclosure and details of our decision. The same conditions relating to secure storage and access apply irrespective of the period of retention.

7. Disposal

We will ensure that disclosure information is destroyed in a secure manner i.e. by shredding, pulping or burning. We will ensure that disclosure information which is awaiting destruction will not be kept in any insecure receptacle (e.g. a waste bin or unlocked desk/cabinet). Electronic records will also be securely deleted once the retention date has been reached.

8. Umbrella Bodies

Before acting as an Umbrella Body (a body which countersigns applications for Standard or Enhanced Disclosures or makes declarations in relation to PVG disclosure requests on behalf of other organisations) we will take the following steps. We will ensure that the organisation on whose behalf we are acting complies with the Code and the 1997 and 2007 Acts. We will take all reasonable steps to satisfy ourselves that they will handle, use, store, retain and dispose of disclosure information in full accordance with this policy. We will also ensure that anybody or individual for whom applications or requests are countersigned, has such a written policy. If necessary, we will provide a model policy for that body or individual to use or adapt for this purpose.

1 The Serious Organised Crime and Police Act 2005 ("the 2005 Act") schedule 14, paragraph 12 amended sections 124

2 Subsection 163(2) of the 2005 Act inserted subsection 113B into the 1997 Act. Subsection 113B (5) of the 2005 Act replaces subsection 115(8) of the 1997 Act.

Considering the Relevance of Information Provided in a PVG Scheme Record

