

# PROTECTING VULNERABLE GROUPS (PVG) SCHEME AND GENERAL PRACTITIONERS

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## SCOTTISH GOVERNMENT ADVICE NOTE

### Purpose

1. The purpose of this note is to provide specific advice to GP practices and others responsible for the employment of GPs on how the PVG Scheme applies to them, and what they must do to ensure that they are complying with the law. This is also relevant to Health Boards as the contracting body for GP services, and use of “employer” throughout this guidance can also be read as “contracting body” when applying to Boards.
2. Advice is provided in relation to:
  - GPs employed directly by a practice
  - Locum and sessional GPs
  - Other practice staff.

### Overview

3. The Protecting Vulnerable Groups (PVG) Scheme took effect on 28 February 2011. The Scheme is established under the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”). Its purpose is to help ensure that those who do regulated work with children and protected adults through paid and unpaid work do not have a known history of harmful behaviour. The PVG Scheme is operated by Disclosure Scotland.
4. The PVG Scheme strengthens protection for vulnerable groups, reduces bureaucracy in comparison with previous arrangements and provides a more efficient system. An important principle underpinning PVG is that a person is a protected adult for the purposes of the Scheme by virtue of a service they receive, not because of a particular condition or disability. They are a protected adult only while receiving that service. For example, an adult who receives care, treatment or advice from a GP will be a protected adult while receiving that care, treatment or advice.
5. It is not mandatory for an individual who is doing regulated work to be a PVG Scheme member. However, it is an offence for an employer to employ someone to do regulated work who is barred from doing so, and it is an offence for an individual to apply for or do regulated work if barred from doing so. The only way for an employer to confirm that someone is not barred from doing regulated work is to ask to see proof of PVG Scheme membership. In practice, therefore, people seeking to do regulated work should join the PVG Scheme and their employers should require this of them.

6. Since the PVG Scheme took effect, all new employees who have come into the regulated workforce should be members of the Scheme, as should anyone already in the regulated workforce who has moved job since the Scheme was implemented. There will be a period of [retrospective checking](#) for people who were already doing regulated work when the Scheme came into force and who have not changed job since. Disclosure Scotland will work with organisations to manage the process of these staff becoming members of the PVG Scheme. This will be phased in over a period of three years on the commencement of retrospective checking.

7. Comprehensive guidance (“the PVG Guidance”) which gives detailed advice on the Scheme, including the steps that should be taken in deciding whether or not someone is doing regulated work, is available online at [www.disclosurescotland.co.uk/guidance/index.html](http://www.disclosurescotland.co.uk/guidance/index.html). The PVG Guidance was published in June 2010.

8. The PVG Scheme applies to GPs and other practice staff who are carrying out regulated work and their employers in the same way as to any other person or employer. It is the responsibility of whoever is employing a particular GP or other practice staff to carry out regulated work to satisfy themselves that the individual is not barred from doing regulated work with children or protected adults as appropriate to their specific duties. The only way to do this is to make sure that they are a member of the PVG Scheme.

### **Regulated work under the PVG Scheme**

9. The 2007 Act does not specify a definitive list of what constitutes regulated work, as the roles and duties that people undertake are varied and flexible and any list would become out of date very quickly. The 2007 Act provides a definition of regulated work in Schedule 2 (children) and Schedule 3 (adults). Chapter 2 of the PVG Guidance also gives more information.

10. It is the responsibility of an employer to decide whether or not a person being offered or doing a particular role would be or is doing regulated work and should therefore be a member of the PVG Scheme.

11. There is a five-step checklist to assist this process:

- Q1** Is it work?
- Q2** Who are they working with?
- Q3** What do they do?
- Q4** Is it their normal duties?
- Q5** Are there any exceptions which apply?

12. Chapter 2 of the PVG Guidance sets out in detail how to apply this checklist to a particular role.

### ***Regulated work with Children***

13. Regulated work with children is defined at [Schedule 2 of the 2007 Act](#). This focuses on work which may be within scope of regulated work with children:

- a position whose normal duties include carrying out particular activities;
- a position whose normal duties include work in particular establishments;
- particular positions of trust or responsibility; or
- a position whose normal duties include the day-to-day supervision or management of an individual doing regulated work with children by virtue of the activities the individual carries out or work the individual does in establishments.

### ***Regulated work with Protected Adults***

14. Section 94 of the 2007 Act provides a definition of a protected adult. All of us may at one time or another be a protected adult: for example, when receiving medical treatment.

15. Deciding whether or not a person is doing regulated work with protected adults requires various considerations to be made. The first step is to ascertain whether or not an individual is a protected adult. An individual is only a protected adult if they are receiving particular services. The kind of services are broadly:

- Registered care services
- Prescribed Health services
- Community care services
- Prescribed Welfare services.

The most relevant in these circumstances are prescribed Health Services. The services prescribed (by the Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Services) (Protected Adults) Regulations 2010 (SSI 2010/161)) are those services under the National Health Service (Scotland) Act 1978 which include providing care and or/advice relating to physical wellbeing. GPs will clearly be involved in such a service and many other staff employed by the practice will be, too. As a result, adults will be protected adults when receiving such a service from a GP.

16. Having concluded that an individual is working with protected adults the next step is to work out whether he or she is doing regulated work (defined in schedule 3 of the 2007 Act). An individual may be doing regulated work with protected adults if their work involves any of the following activities as part of their normal duties:

- 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 well-being, education or training
- Inspecting adult care services (including any premises used for the purposes of providing such services).

A GP will be caring for protected adults and so be doing regulated work.

17. It will be up to each practice to decide whether any other members of staff would fall within one of the categories of regulated work. For example, a practice nurse is very likely to do so, but it is less likely that a receptionist will be doing regulated work. This will, however, depend on each individual's duties.

### **Joining the PVG Scheme**

18. As explained above, there are two types of regulated work: one, regulated work for children, and the other regulated work with protected adults. A list of barred individuals is kept for each type of regulated work and therefore it is possible to join the Scheme for either type of regulated work or for both. Which side of the Scheme to join, or whether to join both, will depend on the individual's role.

19. For GPs seeking to join the Performers List, Health Boards will insist that they must join the Scheme for both types of regulated work. There is a single cost of £59 for this application. A GP practice will have to consider which type of regulated work any other practice staff are doing and ask them to join the Scheme accordingly.

### **PVG Scheme Records - Permissions and Prohibitions**

20. It is an offence for an employer to make an offer of regulated work to a person who is barred from doing that type of regulated work. In practical terms this means that any new employee undertaking regulated work will require to be a PVG Scheme member – this is the only way for an employer to satisfy themselves that the individual is not barred.

21. An individual will commit an offence if they do or agree to do regulated work if they are barred from working in that specific workforce (eg, an individual can be barred from working with children but not barred from working with adults). When considering asking someone to undertake regulated work, employers should ask for sight of the relevant PVG Scheme disclosure. This will allow the employer to satisfy themselves that the individual is not barred from doing regulated work.

22. There are three different PVG Scheme disclosure records:

**Scheme Record:** the Scheme Record is the replacement for enhanced disclosure for work with protected adults and children. It 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. It contains relevant information regarding criminal history and police intelligence and also states that a person is a member of the Scheme or under consideration for listing.

**Scheme Record Update:** this is designed for use by organisations when asking an individual who is already a PVG Scheme member (and who has already had a Scheme Record issued in the past) to do regulated work for them. This record does not include vetting information.

**Scheme Membership Statement:** this 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. This record will not include vetting information.

[Chapter 1 of the PVG Guidance](#) gives detailed information on the different types of PVG Scheme certificates available for regulated work with protected adults and children.

23. Sections 66-68 of the 2007 Act create a series of offences around the inappropriate handling of disclosure information designed to protect the individual from unfair discrimination; these offences apply to all three types of disclosure records.

- it is an offence for anybody to share somebody else's disclosure record, to ensure that the sensitive information is not shared unnecessarily.
- a PVG scheme member may, however, share their own disclosure record if they wish to do so.

24. Chapter 5 of the PVG Guidance sets out full advice on the handling of PVG Scheme information.

### **The National Health Service Primary Medical Services Performers List (“the Performers List”)**

25. The National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004 (the Performers Lists Regulations, SSI 2004 No 114) were amended on 21 December 2011 by SSI 2011 No 392. All GPs, including locum GPs and sessional GPs, who newly join the Performers List thereafter must be PVG Scheme members for regulated work with both protected adults and children.

26. Any GP practice employing someone who has joined the Performers List after 21 December 2011 can be satisfied that the individual is a member of the PVG scheme.

27. A GP practice which relies only on the GP's membership of the Performers List in this way will not have sight of any vetting information; this would only be possible if the GP practice saw the individual's Scheme Record. PVG Scheme membership is only one element of the recruitment process, and demonstrates only that an individual is not barred from doing regulated work. It remains the responsibility of the GP practice to decide whether or not they wish to seek disclosure records to satisfy themselves that the person is fit to work for them.

28. There will be no requirement for GPs who joined the Performers List before 21 December 2011 to be PVG Scheme members for this purpose. It therefore remains the responsibility of the employer to satisfy themselves that such GPs are not barred from doing regulated work.

29. Health Boards must ensure that anyone who is barred from doing regulated work is removed from the Performers List. If a Health Board is notified by Disclosure Scotland that a GP included in its Performers List is placed under consideration for listing then that Board may suspend that GP from the Performers List if they think it is necessary to protect members of the public or is otherwise in the public interest. If they decide to suspend the GP they are required (by regulation 14 of the Performers List Regulations (read with the consent given by the GP at Schedule 1, paragraph 3(k)) to advise any other Health Board that it knows of, who uses the services of that GP for regulated work, about the change in status. Similarly if a Health Board is notified that a GP has been barred from either type of regulated work they must notify any other Health Board they know to have an interest. Furthermore a Health Board must then notify any person who employs that GP of the fact that they have been suspended or removed.

30. The Health Boards can do this because the offences in the 2007 Act regarding the sharing of disclosure information do not apply if the subject consents to the sharing. As stated above, a GP on a Performers List has consented to this sharing by virtue of Schedule 1, paragraph 3(k) of the Performers List regulations.

### **PVG Disclosure checking for sessional and locum GPs**

31. A locum or sessional GP should confirm their membership of the PVG Scheme to their employer (eg, an employment agency, a Health Board or GP practice). It is the responsibility of the employer to ensure that the individual is not barred. For the purposes of the PVG Scheme, where a locum or sessional GP is supplied by a Health Board or an agency, it is the Health Board or agency which is making the offer of regulated work that is responsible for ensuring that the individual is not barred from regulated work. If a locum or sessional GP is employed by the practice directly, it is the practice which is responsible for ensuring that the individual is not barred.

32. If a locum or sessional GP is under consideration for listing, it will be the GP's employer who is notified (ie, the supplying agency or Health Board, or the contracting practice). The employer must decide how to deal with this notification. They must also be prepared to deal with the outcome which could be that the person is barred from doing regulated work. If it is that outcome, it is the responsibility of an employing agency or Health Board to ensure that any such staff they have placed with a GP practice are removed from the workforce. Similarly, GP practices are required to remove that individual from doing regulated work.

33. A locum or sessional GP may work for more than one Health Board. It would be sensible for a locum or sessional GP to ensure that they are a PVG Scheme member, so that they can demonstrate this to prospective employers. In such cases, the individual may show each Health Board his or her disclosure record to demonstrate that they are not barred from doing regulated work.

34. Disclosure Scotland will register an employer's interest in an individual only when that employer requests PVG Scheme information. As such, if a Health Board wishes to be notified that an individual is under consideration for listing, it will need to request PVG Scheme information (such as a Scheme Record Update) from Disclosure Scotland. Disclosure Scotland will then know that the individual is doing regulated work for that Health Board. Disclosure Scotland will notify any relevant

regulatory bodies when an individual is being considered for listing if they think that it is appropriate to do so.

### **Other practice staff**

35. Non-GP staff within GP practices may be doing regulated work depending on their roles. Employers should consider whether a specific job requires the member of staff to undertake regulated work, and respond accordingly. Some staff, such as nurses, are likely to be doing regulated work, while others, such as receptionists, are unlikely to be doing regulated work. However, it is for each employer to consider the roles its staff are undertaking and decide on that basis whether or not PVG Scheme membership is appropriate. [Chapter 2 of the PVG Guidance](#) gives more information.

36. Other types of disclosure (Basic and Standard) will still continue to be available for people in posts which do not involve regulated work.

### **Consideration for listing**

37. At the start and end of any consideration for listing, Disclosure Scotland is required to notify certain parties. These are:

- The individual
- Any organisation for which Disclosure Scotland knows the individual is doing regulated work; and
- Any relevant regulatory body.

38. Where a GP practice requests a disclosure record in regard of a member of staff, whether a GP or another member of staff who is undertaking regulated work, that practice will be notified automatically if Disclosure Scotland considers the individual for listing or bars them from regulated work. Any relevant regulatory body would also be notified automatically, as would any Health Board who had sought a disclosure record when adding them to their Performers List.

39. Where a GP was working as a locum or a sessional GP, Disclosure Scotland would notify all organisations it knows the GP is working for, including all Health Boards and GP practices it is aware of, as well as the relevant regulatory body.

40. If Disclosure Scotland became aware during the consideration for listing process of other organisations for which the member of staff was working, those organisations would be notified when the information became known, even if they had not previously requested disclosure records for that individual.

41. It is an offence for an employer not to remove an individual from regulated work when notified by Disclosure Scotland that they are barred. The PVG referral process means that this is most likely to happen following a referral by another organisation, but it may also happen if they are convicted of a serious criminal offence outside work, dependent on the nature of the offence.

## **Referrals**

42. Organisations must refer an individual to Disclosure Scotland where they have removed that person from regulated work because the individual has harmed a protected adult or child or placed them at risk of harm, or where that individual has engaged in certain types of inappropriate conduct, such as giving inappropriate medical treatment.

43. Where a GP practice terminates the employment of a GP or removes them from doing regulated work because of such harm or inappropriate behaviour (or would have done so had the GP not themselves terminated the arrangement), the GP practice must make a referral to Disclosure Scotland. The referral must be made within 3 months of the practice dismissing or removing the person from regulated work.

44. The NHS Tribunal can also make a referral to Disclosure Scotland, as can regulatory bodies. Chapter 6 of the PVG Guidance gives more information on referrals by organisations.

## **Further Information**

45. Detailed advice and guidance on the PVG Scheme can be found online at [www.disclosurescotland.co.uk/guidance/index.html](http://www.disclosurescotland.co.uk/guidance/index.html) or you can contact Disclosure Scotland direct on 0870 609 6006 (or email: [info@disclosurescotland.co.uk](mailto:info@disclosurescotland.co.uk)).

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