Protecting Vulnerable Groups Scheme
Guidance for individuals, organisations and personal employers
June 2010
## CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Section</th>
<th>Page Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 1</td>
<td>Introducing the PVG Scheme</td>
<td>3</td>
</tr>
<tr>
<td>1.1</td>
<td>How to use this guidance</td>
<td>3</td>
</tr>
<tr>
<td>1.2</td>
<td>Quickstart guide to the PVG Scheme</td>
<td>7</td>
</tr>
<tr>
<td>1.3</td>
<td>Applying for PVG Scheme membership</td>
<td>9</td>
</tr>
<tr>
<td>1.4</td>
<td>The Scheme Record</td>
<td>12</td>
</tr>
<tr>
<td>1.5</td>
<td>The Scheme Record Update</td>
<td>14</td>
</tr>
<tr>
<td>1.6</td>
<td>The Scheme Membership Statement</td>
<td>18</td>
</tr>
<tr>
<td>1.7</td>
<td>Membership matters for individuals</td>
<td>20</td>
</tr>
<tr>
<td>1.8</td>
<td>Do’s and don’ts for organisations</td>
<td>22</td>
</tr>
<tr>
<td>1.9</td>
<td>Do’s and don’ts for personal employers</td>
<td>25</td>
</tr>
<tr>
<td>1.10</td>
<td>Outside Scotland: VBS and overseas</td>
<td>26</td>
</tr>
<tr>
<td>Chapter 2</td>
<td>Regulated Work</td>
<td>29</td>
</tr>
<tr>
<td>2.1</td>
<td>Introduction</td>
<td>29</td>
</tr>
<tr>
<td>2.2</td>
<td>Step 1: Work</td>
<td>30</td>
</tr>
<tr>
<td>2.3</td>
<td>Step 2: Defining children and protected adults</td>
<td>33</td>
</tr>
<tr>
<td>2.4</td>
<td>Step 3: Regulated work with children</td>
<td>38</td>
</tr>
<tr>
<td>2.5</td>
<td>Step 3: Regulated work with adults</td>
<td>48</td>
</tr>
<tr>
<td>2.6</td>
<td>Step 4: Normal duties</td>
<td>54</td>
</tr>
<tr>
<td>2.7</td>
<td>Step 5: Exceptions to regulated work</td>
<td>56</td>
</tr>
<tr>
<td>Chapter 3</td>
<td>PVG Scheme Fees</td>
<td>67</td>
</tr>
<tr>
<td>3.1</td>
<td>Levels of fee</td>
<td>67</td>
</tr>
<tr>
<td>3.2</td>
<td>Payment: the individual or the employer</td>
<td>69</td>
</tr>
<tr>
<td>3.3</td>
<td>Methods of payment</td>
<td>69</td>
</tr>
<tr>
<td>3.4</td>
<td>Refunds</td>
<td>69</td>
</tr>
<tr>
<td>3.5</td>
<td>The role of CRBS</td>
<td>70</td>
</tr>
<tr>
<td>Chapter 4</td>
<td>Retrospective Checking and Re-checking Policies</td>
<td>73</td>
</tr>
<tr>
<td>4.1</td>
<td>Who should join?</td>
<td>73</td>
</tr>
<tr>
<td>4.2</td>
<td>When should they join?</td>
<td>73</td>
</tr>
<tr>
<td>4.3</td>
<td>What happens to existing workers who are barred?</td>
<td>73</td>
</tr>
<tr>
<td>4.4</td>
<td>How will retrospective checking be enforced?</td>
<td>74</td>
</tr>
<tr>
<td>Chapter 5</td>
<td>Sharing Disclosure Records</td>
<td>75</td>
</tr>
<tr>
<td>5.1</td>
<td>Permissions and prohibitions</td>
<td>75</td>
</tr>
<tr>
<td>5.2</td>
<td>Third party access for commissioners of transport services</td>
<td>76</td>
</tr>
<tr>
<td>Chapter 6</td>
<td>Referrals by Organisations</td>
<td>81</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>6.1</td>
<td>Referral grounds</td>
<td>81</td>
</tr>
<tr>
<td>6.2</td>
<td>Duties on organisations and personnel suppliers to refer</td>
<td>84</td>
</tr>
<tr>
<td>6.3</td>
<td>Powers for the regulatory bodies and NHS Tribunal to refer</td>
<td>86</td>
</tr>
<tr>
<td>6.4</td>
<td>Referral information</td>
<td>87</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 7</th>
<th>Consideration for Listing</th>
<th>89</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.1</td>
<td>Triggers for consideration for listing</td>
<td>89</td>
</tr>
<tr>
<td>7.2</td>
<td>The consideration process</td>
<td>92</td>
</tr>
<tr>
<td>7.3</td>
<td>Notifications</td>
<td>93</td>
</tr>
<tr>
<td>7.4</td>
<td>Consequences of a consideration for listing</td>
<td>94</td>
</tr>
<tr>
<td>7.5</td>
<td>The decision to list or dismiss the case</td>
<td>97</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 8</th>
<th>The Lists</th>
<th>99</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.1</td>
<td>Meaning of &quot;listed&quot; and &quot;barred&quot;</td>
<td>99</td>
</tr>
<tr>
<td>8.2</td>
<td>What are the children's and adults' lists?</td>
<td>100</td>
</tr>
<tr>
<td>8.3</td>
<td>The listing process</td>
<td>100</td>
</tr>
<tr>
<td>8.4</td>
<td>Consequences of being listed</td>
<td>101</td>
</tr>
<tr>
<td>8.5</td>
<td>Appealing against a listing decision</td>
<td>102</td>
</tr>
<tr>
<td>8.6</td>
<td>Late representations</td>
<td>104</td>
</tr>
<tr>
<td>8.7</td>
<td>Applying to be removed from the list</td>
<td>104</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 9</th>
<th>Registration for Organisations</th>
<th>107</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.1</td>
<td>What registration means</td>
<td>107</td>
</tr>
<tr>
<td>9.2</td>
<td>Action for existing registered bodies</td>
<td>108</td>
</tr>
<tr>
<td>9.3</td>
<td>New registrations for the PVG Scheme</td>
<td>108</td>
</tr>
<tr>
<td>9.4</td>
<td>Setting up countersignatories in an organisation</td>
<td>109</td>
</tr>
<tr>
<td>9.5</td>
<td>Countersigning disclosure applications</td>
<td>110</td>
</tr>
<tr>
<td>9.6</td>
<td>Duties on registered bodies</td>
<td>110</td>
</tr>
<tr>
<td>9.7</td>
<td>Changes from 1 April 2011: annual subscription</td>
<td>111</td>
</tr>
<tr>
<td>9.8</td>
<td>Changes from later in 2011: online registered body accounts</td>
<td>111</td>
</tr>
</tbody>
</table>

Glossary | 113 |

Annex A | Regulated Work with Children (Schedule 2 as Amended) | 123 |
Annex B | Regulated Work with Adults (Schedule 3 as Amended) | 129 |
Chapter 1: Introducing the PVG Scheme

1. The PVG Scheme is established by the Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act"). This guidance explains what the PVG Scheme is for, how it should be used, the information it collects and provides and how it operates. This guidance is issued by the Scottish Government under section 84 of the PVG Act to assist individuals and organisations to implement the legislation. It may be necessary to refer to the PVG Act and secondary legislation for more information; all legal rights and obligations are contained in the legislation and the guidance is an interpretive aid only.

1.1 – How to use this guidance

2. This guidance is designed for individuals, organisations and personal employers. Throughout this guidance:
   o “individual” means: a worker; a person seeking work; a PVG Scheme member; a person under consideration for listing; or a person barred from regulated work, depending on context;
   o “organisation” includes employers, employment agencies, employment businesses and voluntary organisations; and
   o “personal employer” is a person, other than an organisation, asking an individual to do regulated work.

3. The PVG Scheme replaces enhanced disclosure for individuals working with vulnerable groups. Chapter 1 outlines the way the PVG Scheme works, focussing on the PVG Scheme membership processes and disclosure records.

4. The PVG Act introduces a new concept of ‘regulated work’. Regulated work with children supersedes the definition of child care position in the Protection of Children (Scotland) Act 2003 ("POCSA") and regulated work with adults supersedes contact with an adult at risk. Chapter 2 explains the scope of regulated work and how to identify whether a particular activity or position involves regulated work. The PVG Act definitions of regulated work with children and regulated work with adults are at Annexes A and B, respectively.

5. There are two levels of fee (£59 / £18) which apply to the PVG Scheme, as well as free checks for volunteers doing regulated work for qualifying voluntary organisations. Chapter 3 sets out the fees to join the PVG Scheme and for accessing disclosure records and explains what a qualifying voluntary organisation is.
6. Retrospective checking is the process for managing how individuals already doing regulated work when the PVG Scheme goes live should be brought into the PVG Scheme. Chapter 4 explains how this will work and also advises on organisations’ existing re-checking policies.

7. The information contained in an individual’s Scheme Record is sensitive and personal. Organisations and personal employers cannot share disclosure information without that individual’s consent. Chapter 5 explains when disclosure records can be shared and the limitations on doing so.

8. Organisations are under a duty to refer an individual who has done regulated work for them to Disclosure Scotland in certain circumstances. Chapter 6 explains when organisations should make referrals and the process for doing so.

9. Mirroring the two types of regulated work (with children, with adults), the PVG Act establishes two lists of individuals who are unsuitable to do that type of work. An organisational referral, a court referral, new vetting information or a relevant inquiry report can trigger a consideration for inclusion in one or both of these lists. Chapter 7 explains these triggers and the process and consequences of being under consideration for listing.

10. The PVG Act replaces the Disqualified from Working with Children List (“the DWCL”) established under POCSA with the PVG children’s list and makes provision for those individuals already included in DWCL to be migrated onto the PVG children’s list automatically. It also establishes for the first time in Scotland, a list of those who are unsuitable to do regulated work with adults. Individuals convicted on indictment of certain sexual or violent offences are included in those lists automatically. Chapter 8 explains how the PVG lists work and the consequences of being listed. It also explains how an individual can appeal against a listing decision or apply to be removed from the lists.

11. Access to the Scheme Record and Scheme Record Update can only be through a registered body. Most organisations already registered with Disclosure Scotland to access enhanced disclosures do not need to renew their registration to access these new disclosure records. However, all organisations should be aware of changes to the registration process. Chapter 9 provides an overview of the registration process with a particular emphasis on the interaction with the PVG Scheme.

12. Key words and expressions are explained in the Glossary.

13. It is unlikely that many readers will need to read the guidance in its entirety. It has been designed to allow individuals, organisations and personal employers
to identify the sections which relate to their particular circumstances. Chapters 1 and 2 are central. Most individuals will not need to go beyond chapter 3, unless they have a query or concern about the way their organisation is implementing the PVG Scheme.

**Background to the PVG Scheme**

14. Under Part 5 of the Police Act 1997 ("the 1997 Act"), the Scottish Ministers may carry out criminal record checks. There are three levels of checks: the criminal conviction certificate (basic disclosure); the criminal record certificate (standard disclosure); and the enhanced criminal record certificate (enhanced disclosure). Most enhanced checks have been carried out for the purpose of assessing the suitability of a person for working with vulnerable groups. Around 700,000 people in Scotland work with vulnerable groups, either through their paid employment or as volunteers. Since April 2002, the Scottish Government and BT have worked in partnership as Disclosure Scotland to provide criminal record checks for Scotland. In the first eight years of operation, over 4.6 million applications have been made for basic, standard and enhanced disclosures. In the 2008/09 financial year, 360,000 enhanced disclosures were processed for the purposes of working with vulnerable groups.

15. Since January 2005, the Scottish Ministers have kept a list of individuals who were considered unsuitable to work with children - the DWCL - introduced by POCSA. It has been an offence for anyone included in the list to work in a child care position in Scotland. In the first five years of operation, 393 individuals were listed on DWCL.

16. The PVG Act came about as a response to recommendation 19 of the Bichard Inquiry Report published in the June 2004, following Sir Michael Bichard's inquiry into the murder of two schoolgirls in Soham in 2002. The Inquiry looked at police intelligence gathering and record keeping, the way such information was shared, and the way it was used for vetting individuals as part of child protection procedures and made 31 recommendations. Recommendation 19 stated that, “new arrangements should be introduced requiring those who wish to work with children, or vulnerable adults, to be registered.”

17. The PVG Scheme ends the use of disclosure checks under the 1997 Act for work with children and adults at risk. They are replaced by new types of disclosure records under the PVG Act. The PVG Scheme ensures that those who either have regular contact with vulnerable groups through the workplace, or who are otherwise in regulated work, do not have a history of inappropriate behaviour. It excludes people who are known to be unsuitable, on the basis of past behaviour, from working with children and/or protected adults and detects
those who become unsuitable while in the workplace. Disclosure Scotland keeps a list of individuals who are considered to be unsuitable to work with children (“the children’s list”). Under the PVG Act, Disclosure Scotland also keeps, for the first time in Scotland, a list of those who are barred from working with protected adults (“the adults’ list”).

18. The PVG Scheme is managed and delivered by Disclosure Scotland as an executive agency of the Scottish Government. Disclosure Scotland also continues to deliver the other types of disclosure (which are still available under the 1997 Act for checks which are not for the purposes of work with children or protected adults). The Protection Unit within Disclosure Scotland receives and considers referrals and takes decisions, on behalf of 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.

**Improvements offered by the PVG Scheme**

19. The PVG scheme offers the following improvements on the current system:
   - **effective barring** - Disclosure Scotland does not just collect vetting information, it also assesses it so that individuals who are considered unsuitable on the basis of vetting information are prevented from entering the workforce;
   - **the adults’ list** - a new list of individuals who are unsuitable to work with protected adults;
   - **continuous updating** - continuing to collect vetting information about an individual after the initial disclosure check has been made so that new information indicating that they might be unsuitable can be acted upon;
   - **streamlined disclosure processes** - recognising that some people may have several roles (e.g. a supply teacher in several different locations and a scout leader in their spare time) and that people move and change jobs over time; and
   - **access to disclosure for personal employers** - they can check that the person they are seeking to employ is not unsuitable, e.g. a parent employing a sports coach for their child or someone buying a care service directly.

**Access to basic, standard and enhanced disclosures**

20. The three types of disclosures under the 1997 Act are still available for positions not within the scope of the PVG Scheme. Basic disclosure continues to be available for any purpose. Standard disclosure continues to be available for broadly the same positions as before, for example, solicitors and accountants. Enhanced disclosure continues to be available for those posts unrelated to work with vulnerable groups, for example certain gaming
and lottery licences, and other appointments involving access to children or protected adults other than through regulated work\(^1\).

1.2 – Quickstart guide to the PVG Scheme

21. This section is designed to answer the most basic questions about the PVG Scheme.

**Action when the PVG Scheme goes live**

22. **Individuals** who are in post and who are doing regulated work, whether or not they have ever had an enhanced disclosure, do not need to do anything when the PVG Scheme goes live.

23. **Organisations** do not need to do anything about their existing employees or volunteers who are doing regulated work when the PVG Scheme goes live, whether or not they have had enhanced disclosures.

24. When an organisation is asking an individual to do regulated work with children and / or regulated work with adults for them for the first time (whether an existing or new member of staff), the organisation should ask the individual to join the PVG Scheme. This is very similar to the decision they would have made about whether they needed to ask for enhanced disclosure.

**Joining the PVG Scheme**

25. **Individuals** who are self-employed, or expect to become self-employed, in a capacity which involves regulated work, may wish to join the PVG Scheme for, or in anticipation of, such work.

26. **Organisations** should ask individuals to whom they are offering regulated work with children and / or regulated work with adults for the first time to become PVG Scheme members. Organisations can ask existing staff to join the PVG Scheme as part of a continuation of existing practice of re-checking employees or volunteers from time to time. Organisations should not begin a new policy of re-checking existing staff doing regulated work from the start of the PVG Scheme.

**Form for a PVG Scheme membership application**

27. There is a new PVG Scheme application form which looks similar to the enhanced disclosure application form although it is a different colour.

---

\(^1\) The Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 (SSI 2010/168) set out the criteria for eligibility for enhanced disclosures, for positions which are outside the scope of the PVG Scheme.
28. **Organisations** should note that the positions which are eligible for PVG Scheme membership are not quite the same as those eligible for enhanced disclosure and they should check that an individual's disclosure application relates to regulated work with children and / or adults. If it does not, they could ask for a basic disclosure and, in some cases prescribed by law, standard disclosure may be available.

**Application fee**
29. Joining the PVG Scheme costs £59 unless the application to join is for an individual who is doing voluntary work for a qualifying voluntary organisation. The cost reflects the benefits of PVG Scheme membership which includes cheaper subsequent checks in most cases, reduced bureaucracy and improved protection. The fees are waived for volunteers working for qualifying voluntary organisations joining the PVG Scheme. Qualifying voluntary organisation is defined by law for the purposes of the PVG Scheme but aims to preserve the current arrangements for volunteers (see chapter 3).

**Information on a Scheme Record**
30. A Scheme Record is issued to the individual and the registered body, in the same way as enhanced disclosures were issued. It contains similar information. Unlike an enhanced disclosure, if an individual who is barred applies to join the PVG Scheme, they will not get a Scheme Record but the individual and organisation will be advised by letter that the individual is barred from doing that type of regulated work.

**Time to process an application**
31. Joining the scheme and obtaining the first Scheme Record take about the same amount of time as obtaining an enhanced disclosure as the same processes need to be gone through by Disclosure Scotland.

**Enhanced disclosure not an option**
32. Enhanced disclosure is not available to people who are doing regulated work with vulnerable groups because the Scheme Record is available instead.

**Making applications through CRBS**
33. CRBS will continue to support organisations in respect of making applications for PVG Scheme membership, in much the same way as they do with enhanced disclosure.
1.3 - Applying for PVG Scheme membership

Safe recruitment practice
34. The PVG Scheme provides an organisation with a means of satisfying itself that those doing paid or unpaid regulated work for it are not barred from doing so. If vetting information exists this will appear only on the Scheme Record. This might prove helpful when an organisation is deciding whether an individual is suitable for the specific work being offered. The fact that they are not barred and that vetting information has been checked does not necessarily make them the best candidate, or even suitable, for the post. It is important to carry out proper recruitment checking of aspects such as skills and qualifications. Many organisations also check references to ensure that information asserted in an application form or CV is verified by previous employers or someone independent. The decision to offer regulated work should be determined by the content of the Scheme Record and information gathered using good recruitment practices. There is information about safe recruitment practice on the Scottish Government website\(^2\) (and see also section 1.10). That decision about whether an individual is suitable for a position must always be taken by the organisation.

Eligibility
35. Membership of the PVG Scheme is open to people doing, seeking to do, or planning to do regulated work with children or protected adults. Also, certain professional regulatory bodies might ask their members to join the PVG Scheme. Individuals entering regulated work for the first time should expect to be asked by their employer or organisation to join the Scheme. Individuals who are already doing regulated work with children or adults should expect in time to be asked by their employer or organisation to join the Scheme.

Determining whether an individual is doing regulated work
36. Determining whether or not an individual is doing regulated work, and what type, is an essential prerequisite before any PVG Scheme application can be made at the request of an organisation. This is covered in chapter 2.

Types of disclosure record available
37. When a person applies to join the PVG Scheme for the first time, there are two types of disclosure record available:
- the Scheme Record (see section 1.4) - at the request of an organisation; or
- the Scheme Membership Statement (see section 1.6) - at the request of a personal employer or by the individual alone in anticipation of doing regulated work in the future.

\(^2\) [www.scotland.gov.uk](http://www.scotland.gov.uk)
38. A Scheme Record Update (see section 1.5) is not available to new entrants because it only makes sense in the context of a pre-existing Scheme Record.

**Application form**

39. When an individual wishes to join the PVG Scheme, they will need to fill in a detailed application form and provide proof of identity, just like for enhanced disclosure. (A simpler application form is available for subsequent disclosure applications by PVG Scheme members.) This application form will need to be countersigned by a registered body if it is for a Scheme Record or by a personal employer if it is for a Scheme Membership Statement and the personal employer wants to receive a copy. The application form does not need to be countersigned if it is made by the individual alone in anticipation of doing regulated work in the future.

**Authentication**

40. Where an individual applies to join the PVG Scheme in anticipation of doing regulated work or for a personal employer, Disclosure Scotland will carry out authentication by checking the evidence of identity provided by the individual. Copies of supporting documentation should be provided with the application. Original documents should not be sent.

41. Where an individual applies to join the PVG Scheme at the request of a registered body, they will verify that identity documentation has been shown to them and countersign the form. Disclosure Scotland will still carry out some identity checks of its own and if necessary might request copies of supporting documents from applicants.

42. Where an individual is volunteering for regulated work in a qualifying voluntary organisation in Scotland, CRBS will be able to countersign the form as long as the organisation is enrolled with CRBS for that purpose. Disclosure Scotland will still carry out authentication checks in the background and if necessary might request copies of supporting documents from applicants.

**Processing a PVG Scheme membership application**

43. When an application to join the PVG Scheme is received, Disclosure Scotland will first check that the individual is not already barred from doing regulated work. If the individual is barred, they will be refused PVG Scheme membership. If the individual is not barred, Disclosure Scotland will create a unique record of scheme membership for the individual and search for vetting information from a range of sources. In over 90% of cases\(^3\), no vetting information will be found and the individual will become a member of the PVG Scheme.

\(^3\) Based on experience of processing enhanced disclosure applications.
44. If vetting information is found about an individual which does not have a bearing on the individual’s suitability to do regulated work, then it will be added to their record. If the application was in respect of a Scheme Record, this vetting information would appear on it.

45. If vetting information is found about an individual which does have a bearing on the individual’s suitability to do regulated work, then it will still be added to their record. Additionally, it will be examined by the Protection Unit at Disclosure Scotland to determine whether or not to put the individual under consideration for listing.

46. If an applicant for PVG Scheme membership is placed under consideration for listing, that person will still become a PVG Scheme member during the time the consideration is taking place, and the disclosure record issued in response to the application will state that fact. If the application was in respect of a Scheme Record, the vetting information would also appear on it. For more about the consideration for listing process see chapter 7.

Issuing disclosure records
47. Assuming the individual is not barred, Disclosure Scotland will issue the requested disclosure record and this will also mean that the individual is now a member of the PVG Scheme:
   o A Scheme Record is issued to the individual and the person in the registered body who countersigned the application (and to the GTCS or SSSC, where the applicant has included a registration number on the application form). If the individual is working for an organisation which is not the registered body, the disclosure record will be passed to that organisation. The most common example of this is the role of CRBS acting as a registered body for voluntary organisations.
   o A Scheme Membership Statement is issued to the individual and to the personal employer who countersigned the application (if any).

What happens after that
48. Once an individual is a PVG Scheme member:
   o Disclosure Scotland will keep the individual’s PVG Scheme membership and vetting information up to date. This process is called continuous updating and is one of the biggest differences between enhanced disclosure and the PVG Scheme. Enhanced disclosures simply provided a snapshot of a person’s criminal conviction history at the point-in-time when the disclosure was issued. No information was updated by Disclosure Scotland until a further application, if any, for an enhanced disclosure was made and a new enhanced disclosure was issued.
This means that access to disclosure records is much faster because all the information is already held by Disclosure Scotland. For an explanation of the three types of disclosure record, see sections 1.4 to 1.6 below.

Any new vetting information that comes to light about a PVG Scheme member will be assessed. If the information suggests that the PVG Scheme member may have become unsuitable to do regulated work with children or protected adults, then they will be placed under consideration for listing. See chapter 7 for more about consideration for listing.

Disclosure Scotland will keep a record of registered bodies and regulatory bodies which have an interest in the individual.

If a PVG Scheme member is placed under consideration for listing or barred, the individual and any organisation(s) with an interest in the individual will be notified.

What scheme membership means
49. Just because an individual is a PVG Scheme member (and so not unsuitable to do that type of regulated work) does not necessarily mean that the individual is suitable to work in a specific position. That decision must always be taken by the employer, informed by the content of the individual’s Scheme Record as well as other good recruitment and employment practice.

1.4 – The Scheme Record
50. The Scheme Record is the replacement for enhanced disclosure for work with vulnerable groups.

Purpose
51. The Scheme Record 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.

Contents
52. The Scheme Record shows basic membership information (common to all three types of disclosure record):
   o the type(s) of regulated work in respect of which the individual is a PVG Scheme member (thereby confirming that the individual is not barred from regulated work of that type); and
   o if the individual is under consideration for listing for the type(s) of regulated work, states that fact.
53. The Scheme Record also includes any vetting information that exists in relation to the individual. Vetting information is:
   - convictions and cautions held on central records in the UK;
   - whether the individual is included on the sex offenders register;
   - relevant non-conviction information provided by police forces; and
   - prescribed civil orders.

54. The Scheme Record also includes the following personal membership information:
   - the name, address, date of birth and PVG Scheme membership number of the individual;
   - the unique disclosure number of the Scheme Record;
   - the name and address of the registered body and countersignatory details on the copy for the registered body copy and any regulatory body; and
   - the name and address of the regulatory body and registration number on any copy for a regulatory body only.

Prescribed civil orders
55. The civil orders that can be disclosed on the Scheme Record are:
   - a sexual offences prevention order (or interim order) under the Sexual Offences Act 2003 (“the 2003 Act”);
   - a foreign travel order under the 2003 Act;
   - a risk of sexual harm order (or interim order) under the 2003 Act;
   - a notification order (or interim order) under the 2003 Act; and
   - a risk of sexual harm order (or interim order) under the Protection of Children and Prevention of Sexual Offences (Scotland) 2005.

Usage
56. A Scheme Record costs £59 (see chapter 3 for more information on fees).

57. A Scheme Record is to be used in broadly the same way as an enhanced disclosure. But:
   - Unlike enhanced disclosure, a Scheme Record will not be issued if the individual is barred. Instead, a letter would be issued to the individual and registered body.
   - Unlike enhanced disclosure, a Scheme Record is portable. That is, it relates to one or both workforces and is not specific to the post.
   - The Scheme Record Update should be used for existing PVG Scheme members who already have a Scheme Record.
Case Study C1.1  
**New PVG Scheme member**

A. Jane works as a consultant paediatrician in a hospital. She is not a PVG Scheme member. She applies for a job in another hospital and she is asked to join the PVG Scheme.

B. Jane’s specialism means that she does regulated work with children only. Her new employers should ask her to join the PVG Scheme in respect of regulated work with children and obtain a Scheme Record at a cost of £59. They must not ask her to join in respect of regulated work with adults.

Case Study C1.2  
**Existing PVG Scheme member**

A. A few months ago, Alison joined the PVG Scheme in respect of regulated work with adults because she took a new position as a volunteer with WRVS which involved caring for protected adults. Now Alison wants to help out at her local school.

B. Although she has a Scheme Record from her voluntary work, this only relates to regulated work with adults. It will be necessary for the school to ask her to apply to join the PVG Scheme in respect of regulated work with children to obtain a new Scheme Record for this purpose at a cost of £59. The school cannot make use of the Scheme Record Update as she does not have a previous Scheme Record for this workforce. But as Alison was already a member of the PVG Scheme in respect of regulated work with adults (and has therefore provided all her personal information to Disclosure Scotland before), she uses the short application form for this purpose.

1.5 – The Scheme Record Update

58. The Scheme Record Update is a new type of disclosure. It is designed to be a quicker, cheaper and simpler check for organisations recruiting individuals who are already PVG Scheme members (see Usage below).

**Purpose**

59. The Scheme Record Update is designed for use by organisations when asking an individual who is already a PVG Scheme member (and who has already had Scheme Record issued in the past) to do regulated work for them. The organisation must be a registered body or use an umbrella body to act as a registered body on their behalf.
Contents

60. A Scheme Record Update shows basic membership information (common to all three types of disclosure record):
   o the type(s) of regulated work in respect of which the individual is a PVG Scheme member (thereby confirming that the individual is not barred from regulated work of that type); and
   o if the individual is under consideration for listing for the type(s) of regulated work, states that fact.

61. A Scheme Record Update also includes:
   o the date that the PVG Scheme member’s Scheme Record was last disclosed (and the disclosure record number of the applicant’s copy);
   o a statement as to whether that Scheme Record contained vetting information;
   o either a statement confirming that no new vetting information has been added since the Scheme Record was last disclosed or the date of each addition; and
   o either a statement confirming that no vetting information has been deleted since the Scheme Record was last disclosed or the date of each deletion.

62. The Scheme Record Update also includes the following personal membership information:
   o the name, address, date of birth and PVG Scheme membership number of the individual;
   o the unique disclosure record number; and
   o the name and address of the registered body and countersignatory details.

63. The Scheme Record Update does not include any vetting information. One reason for this is to allow it to be viewable on-line through a normal web browser as part of the on-line functionality to be made available during 2011.

Usage

64. If an organisation wants to check an individual who is already a PVG Scheme member and who has already obtained a Scheme Record (whether or not as a result of a request from that organisation), they should apply for a Scheme Record Update. In the past, over 90% of enhanced disclosures had no vetting information on them at all. This means that the overwhelming majority of Scheme Record Updates will state that the individual’s Scheme Record contained no vetting information and the organisation will not need to see the individual's Scheme Record at all.

65. The Scheme Record Update always costs £18 and is cheaper than a Scheme Record (at £59) and enhanced disclosure under the previous arrangements (£23 then £25 from PVG Scheme go-live). (See chapter 3 for more
information on fees.) PVG Scheme membership does not expire so the many individuals with no vetting information on their Scheme Record will only ever require to request Scheme Record Updates for the rest of their working life.

66. The application for a Scheme Record Update (and any other disclosure record for an individual who is already a PVG Scheme member) is made on a short form requiring much less information from the individual because Disclosure Scotland already has the individual’s personal information.

67. An application for a Scheme Record Update can be turned round very quickly because all the information needed to generate the disclosure is already held by Disclosure Scotland, so there is no delay in retrieving information from other sources. (This also applies to other disclosure records in respect of individuals who are already PVG Scheme members.) But the additional benefit with a Scheme Record Update is that it will be able to be viewed on-line, once the on-line functionality is rolled out in 2011. This means that organisations will be able to put in place arrangements to get the results of such a check almost instantly.

68. In the tiny minority of cases where a Scheme Record Update indicates that there is vetting information on the Scheme Record, the individual should be asked to provide their copy for inspection. The information on the Scheme Record Update will allow the organisation to confirm whether the Scheme Record shown is most recent one issued. Again, where there is no new vetting information, this combination of the new Scheme Record Update and the existing Scheme Record provides the sum total of the information about the individual.

69. There will, however, be cases where a Scheme Record Update indicates that new vetting information has been added since the last Scheme Record. In these cases, the organisation could lawfully recruit the individual on the basis of the information in the Scheme Record Update alone (as this is sufficient to indicate that the individual is a PVG Scheme member and not barred). However, if the organisation wishes to know what the new vetting information is, they should upgrade to a Scheme Record. This will not cost any more than if the original request had been for a Scheme Record, if it is made within 30 days of the date of issue of the Scheme Record Update (see chapter 3).

70. The upgrade to a Scheme Record requires the consent of the individual. But an organisation asking an individual to do regulated work has the right to ask about the additional vetting information. The organisation could consider whether to terminate any regulated work that the individual did for it, if such consent was withheld without good reason.
Case Study C1.3
No information on the Scheme Record
A. Donald is a doctor and is a PVG Scheme member and has a Scheme Record in respect of both workforces. Donald decides to look after the crèche in his local church.

B. The church knows that looking after the crèche is regulated work with children and asks for a Scheme Record Update. The Scheme Record Update comes back indicating that there is no vetting information on Donald’s last Scheme Record nor any new vetting information since. This means that the church can appoint Donald without asking to see his old Scheme Record as everything they need to know is on the Scheme Record Update.

Case Study C1.4
Information on the Scheme Record
A. Rohit joins the PVG Scheme at a cost of £59 when recruited to teach geography in a secondary school. His Scheme Record contains one minor conviction for theft from some time ago. The headmaster decides that the time elapsed since the conviction taken together with the exemplary references from previous employers means that Rohit can be appointed.

B. One year later, Rohit is successful in applying for a head of department job in another school. His new school asks for a Scheme Record Update at a cost of £18. This reveals that there is no new vetting information since the last Scheme Record but that there was vetting information in it. Rohit has kept his copy of the Scheme Record and presents this to the headmaster the new school. The date of issue, personal details and certificate number of Rohit’s old Scheme Record are all corroborated by the new Scheme Record Update. As before, the headmaster decides that the time elapsed since the conviction taken together with the exemplary references from previous employers means that Rohit can be appointed. The new school was able to make this decision by paying only for Scheme Record Update at £18, rather than asking for a new Scheme Record at £59.

Case Study C1.5
New vetting information
A. Nurseries Ltd are recruiting Linda, a new member of staff. Linda’s job application form showed that she was previously a primary school teacher so has done regulated work with children and is therefore likely to be PVG Scheme member.

B. Nurseries Ltd offered Linda the job, subject to no issues with her disclosure record. She advised that she was a PVG Scheme member in respect of regulated
work with children and had a Scheme Record from her previous employment. She advised her employer that she had received a driving conviction since then.

C. Nurseries Ltd asked her to apply for a Scheme Record Update at a cost of £18. This confirmed that she was a member of the PVG Scheme, as she had advised. It also confirmed that there was no information on her previous Scheme Record, but that there was new vetting information from last December, which confirmed what Linda had said about the timing of her driving conviction.

D. Nurseries Ltd could employ Linda without asking for a Scheme Record (because her PVG Scheme membership ensures that she is not barred from doing regulated work with children). But they decide that they would like to confirm what the new vetting information is. So, they followed up with a request for a Scheme Record (at an additional cost of £41). This confirmed Linda’s explanation – the new vetting information was indeed the driving conviction. As her duties did not involve driving children, Nurseries Ltd had no issue with employing her.

1.6 – The Scheme Membership Statement

71. The Scheme Membership Statement is a new type of disclosure.

Purpose

72. The Scheme Membership Statement 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. As it is for sharing with personal employers, it does not contain vetting information.

Contents

73. The Scheme Membership Statement shows basic membership information (common to all three types of disclosure record):
   - the type(s) of regulated work in respect of which the individual is a PVG Scheme member (thereby confirming that the individual is not barred from regulated work of that type); and
   - if the individual is under consideration for listing for the type(s) of regulated work, states that fact.

74. It also includes the following personal membership information:
   - the name, address, date of birth and PVG Scheme membership number of the individual;
   - the unique disclosure record number; and
   - the name and address of the personal employer on the personal employer’s copy.
Usage
75. Any individual who is not barred can apply for a Scheme Membership Statement in anticipation of future regulated work. Such an application will always cost £59.

76. A personal employer can require an individual to join the PVG Scheme (if necessary), countersign the application and receive their own copy of the Scheme Membership Statement. This will cost £59 or £18, depending on whether the individual is already a member of the PVG Scheme. There is more information for personal employers at section 1.9.

Case Study C1.6
Application in anticipation of regulated work
A. Tom wants to volunteer working with children in the summer. He has a conviction from 10 years ago for breach of the peace because he got involved in a fight outside a pub. He recalls that some people involved in the fight were under 18 and is concerned it might affect his chances of doing regulated work with children.

B. Tom decides that it would be useful to resolve this before he seeks to do voluntary work. He applies to join the PVG Scheme. He pays £59 and receives a Scheme Membership Statement. When he applied, Disclosure Scotland found the conviction on his record and assessed it to see whether he should be considered for listing. In his case, it was decided that there were not sufficient grounds for consideration for listing and his Scheme Membership Statement was issued, simply stating that he was a member of the PVG Scheme in relation to regulated work with children.

C. Later, when Tom approaches a voluntary organisation for specific post, they ask him to apply for a Scheme Record, which reveals his conviction. But, by joining the PVG Scheme in advance, Tom has ensured that the information has already been assessed by Disclosure Scotland and that the Scheme Record will be issued very quickly (because all the information has already been collated).

Case Study C1.7
Self-employed piano teacher
A. Sally is at university studying music. During the summer break, she intends to offer piano lessons to children in their own homes to augment her income. She knows this will be regulated work with children and anticipates that at least some parents will want to see a Scheme Membership Statement.
B. Sally applies to join the PVG Scheme in respect of regulated work with children. Sally pays £59. Sally is issued with a Scheme Membership Statement in April. She starts work providing piano lessons in June. The first few parents are content to see her Scheme Membership Statement from April. When she takes on new clients in August, some parents ask for a more recent Scheme Membership Statement. She asks one parent to countersign an application, she pays £18 and she and that parent receive a new Scheme Membership Statement. She now uses this Scheme Membership Statement to show to other parents and destroys her old copy.

1.7 – Membership matters for individuals

77. One consequence of the PVG Scheme being a membership scheme is that the individual has an ongoing relationship with Disclosure Scotland and that some PVG Scheme documentation issued has an ongoing relevance. This is different to the enhanced disclosure process.

Looking after disclosure records

78. All disclosure records contain the individual’s PVG Scheme membership number, which will not change (unlike the disclosure number which is unique to every disclosure record issued). PVG Scheme members should keep a careful note of this number as it will speed up any applications made to Disclosure Scotland at a later date. Any Scheme Record issued to a PVG Scheme member should be retained, in case any organisation wants to see it when the individual seeks to do regulated work elsewhere. The most recent Scheme Membership Statement should also be retained, in case any personal employer wants to see it. (Scheme Record Updates are not portable and can be destroyed.)

Notifying Disclosure Scotland of changes to personal information

79. The PVG Act requires PVG Scheme members to notify two types of change to personal information to Disclosure Scotland within three months of the change taking effect, these being:
   o a change in the member’s name; or
   o a change in gender (as indicated by the issue of a full gender recognition certificate).

80. Failure to do so, without reasonable excuse, is an offence.

81. Individuals should keep other personal information up to date too. Ensuring Disclosure Scotland has, for example, a current home address, telephone number or email address means that contact can be made quickly in the event of any query about PVG Scheme membership.
82. It will also ensure no delay in issuing a subsequent disclosure record. A change in personal information will sometimes require re-vetting. This process can take time. If the change in personal information only comes to light at the time of a disclosure application, this will delay the issuing of the disclosure record. In particular, it would prevent a Scheme Record Update being available on-line, when this service becomes available in 2011.

**Stopping doing regulated work for an organisation**

83. PVG Scheme members should notify Disclosure Scotland if they cease to work for a particular organisation. When Disclosure Scotland receives such a notification, it will seek confirmation from the organisation before removing the organisation’s interest in the individual. There is no requirement on individuals to do this but, if they do not, they risk previous employers being notified of any consideration for listing or listing decision.

**Leaving the PVG Scheme**

84. A PVG Scheme member may ask to leave the PVG Scheme in respect of one or both workforces at any time, provided they are no longer doing the type of regulated work to which their request for removal relates. An individual with no interested organisations will normally be assumed to be no longer doing regulated work and therefore free to leave the PVG Scheme. But note that if the individual wished to re-join the PVG Scheme at a later date, the application process (including fee charged) would be the same as if they had never been a PVG Scheme member.

**Disputing vetting information**

85. Individuals may request correction of any information on their Scheme Record including the vetting information. A review of conviction information, sex offender notification details and details of civil orders can be requested on the grounds of accuracy (i.e. that a particular conviction, caution or civil order does not belong to the individual or is incorrectly described). A review of non-conviction information provided by the police can be requested on the grounds of accuracy or relevance to the regulated work performed by the PVG Scheme member.

86. Disputes about the accuracy of vetting information in a disclosure record must be raised within 3 months of the date of the scheme record being issued. There is detailed guidance about how to dispute the content of disclosure records on the Disclosure Scotland website.

---

5 [www.disclosurescotland.co.uk/understanding/dispute/](http://www.disclosurescotland.co.uk/understanding/dispute/)
87. If the request for review is about the non-conviction information provided by a police force, Disclosure Scotland will contact the police force or forces that provided the information with details of the dispute. Only if the police force agrees to amend the information will Disclosure Scotland be able to amend the Scheme Record.

88. In all cases where a Scheme Record is corrected, Disclosure Scotland will issue new Scheme Records to the scheme member and organisations for whom they know the person is doing regulated work if they had received an inaccurate version of the Scheme Record. There will not be a charge for the disclosures that are reissued and these will be dated with the date of the original Scheme Record.

**Falsification of disclosure records**

89. Section 65 makes it an offence to falsify a disclosure record. Reasons why an individual might attempt to falsify a disclosure record include attempting: to avoid paying a fee for a disclosure application; to avoid embarrassment over some historic incident or conviction; or to obtain a position, or enter regulated work generally, unlawfully.

90. It should be noted that there are a number of security measures which make falsifying a disclosure record extremely difficult. These include information on the disclosure records which can be corroborated against identity documentation presented by the individual.

**Doing regulated work when barred**

91. It is an offence for an individual who is barred to undertake the type of regulated work from which they are barred. Such an individual would usually be aware of their barring (because they would have been listed following a conviction or organisational referral etc through proceedings in which they would have participated).

1.8 – Do’s and don’ts for organisations

**Requesting disclosure records**

92. It is an offence for an organisation to offer regulated work to someone who is barred or to fail to remove a person from regulated work if they have been notified that they are barred. The way to avoid committing this offence is to ensure that any individual being recruited to do regulated work is a PVG Scheme member by asking for the most appropriate disclosure record. Organisations should normally use the Scheme Record for new members and

---

6 Section 34 of the PVG Act.
7 Section 35 of the PVG Act.
the Scheme Record Update for existing members. Organisations are not prohibited from requesting Scheme Membership Statements but this is discouraged as they will not receive as much information as they are entitled to do.

93. Only registered bodies can access Scheme Records and Scheme Record Updates. Not all organisations are registered bodies. Organisations asking individuals to do regulated work for them should either become registered bodies (see chapter 9) so that they can countersign disclosure applications themselves or use the services of an umbrella body, a registered body that can do this for them.

**Unlawful requests for disclosure records**

94. Many organisations will offer regulated work and also work that is not regulated work. The PVG Scheme disclosure requests can only be used for regulated work only. Work that is not regulated work, may qualify for standard disclosure (especially in health care settings). Basic disclosures can be used for any purpose. It is an offence to ask someone to apply to join the PVG Scheme or make a disclosure application in relation to work which is not regulated work under the PVG Act.

**Using disclosure information for recruitment decisions**

95. An organisation is entitled to use all vetting information on a Scheme Record to inform a recruitment or retention decision. However, an organisation must apply any criteria around vetting information in a fair, consistent and proportionate manner. The criteria should be identified in advance and linked to the specific role. An individual who is allowed to become or remain a PVG Scheme member is not unsuitable to do regulated work. However, vetting information may indicate that they are not suitable to do a particular job. For example, recent driving convictions may exclude an individual from doing a job which involves driving.

96. An organisation can refuse to recruit or continue to use an individual to do regulated work if that individual refuses to consent to PVG Scheme membership or disclosure records without reasonable grounds to do so.

97. Any organisation who receives an individual’s disclosure record from Disclosure Scotland to help them make a recruitment decision can use it only for that purpose. They must not use it for a purpose other than the reason it was originally requested. Usually this will be part of the process of deciding on that individual’s job application. The organisation or personal employer is not allowed to pass it on to anyone who is not involved in making the recruitment decision. If they do so, they will be committing an offence.
**Retention of disclosure records**

98. Disclosure records retained by an organisation (for however long or short a period) must be stored securely. Secure storage means, for example, that the record should be stored in a locked and non-moveable storage unit to which people in general do not have access.

99. Organisations should not retain disclosure records indefinitely. However, the organisation can retain details of when the check was made, the disclosure reference number, and the date of the check and for whom it was carried out. This can provide evidence if needed, for example, to an inspection body that appropriate checks have been carried out on staff.

100. Organisations should be aware at all times of the need to comply with the Data Protection Act 1998 which requires that personal information should be kept only for as long as it is required for the purposes for which it was obtained. The Information Commissioner’s website is also helpful.

101. More information on this topic can be found about this in the Code of Practice (revised to take account of the PVG Scheme).

**When a PVG Scheme member leaves the organisation**

102. Disclosure Scotland maintains a record of all the organisations that have an interest in a PVG Scheme member. Where an organisation has requested a Scheme Record or Scheme Record Update in respect of an individual, that organisation is assumed to have an interest in that individual until Disclosure Scotland is notified otherwise. Additionally, any regulatory body whose registration number has been provided on an application form will also be assumed to have an interest in that individual.

103. Where a PVG Scheme member ceases to do regulated work for an organisation, the individual should notify Disclosure Scotland. If that happens, Disclosure Scotland will seek confirmation from the organisation. Once that is received, the organisation will be removed from the record of scheme membership.

104. The on-line registered body accounts which will become available in 2011 will make it very easy for organisations to manage their interest in individuals who work for them. Organisations will be able to de-register an interest in an individual through their on-line account and approve such notifications from individuals.

---

8 [www.ico.gov.uk/for_the_public/your_personal_information.aspx](http://www.ico.gov.uk/for_the_public/your_personal_information.aspx)
105. If an organisation receives a notification concerning the consideration for listing or barring of an individual who no longer does regulated work for them, Disclosure Scotland should be contacted immediately and the notification returned.

**Removing barred individuals from regulated work**

106. It is an offence for an organisation not to remove an individual from regulated work when notified by Disclosure Scotland that they are barred. This is most likely to happen following an organisational referral by another organisation.

**1.9 - Do’s and don’ts for personal employers**

107. A personal employer can employ a barred individual without committing an offence, although they are encouraged to make use of the PVG Scheme so that they can be sure that an individual is not barred. An individual who is barred from regulated work and who seeks to do, or does, regulated work for a personal employer is committing an offence.

108. A personal employer asking an individual to do regulated work can request to see that individual’s Scheme Membership Statement. This can be a Scheme Membership Statement issued some time in the past (but not too long ago) or the personal employer can ask for a new Scheme Membership Statement to be issued but either they or the individual would need to pay for it.

109. A personal employer must not ask to see any other form of disclosure record for any purpose or to see a Scheme Membership Statement for a purpose other than because the individual is doing regulated work for them. To do so is an offence.

110. A personal employer should not retain a Scheme Membership Statement but should either hand it back to the individual or destroy it properly (e.g. with a shredder). It is not appropriate simply to put it in the bin.

111. A personal employer cannot make a referral to Disclosure Scotland (see chapter 6).

---

9 Under the Protection of Vulnerable Groups (Scotland) Act 2007 (Removal of Barred Individuals from Regulated Work) Regulations 2010 (SSI 2010/244).
1.10 – Outside Scotland: VBS and overseas

112. The Safeguarding Vulnerable Groups Act 2006 (“the SVG Act”) and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 establish a similar vetting and barring scheme (“the VBS”) for England, Wales and Northern Ireland. The introduction of the VBS and PVG Scheme on similar timescales in different parts of the UK raises a number of questions about how they interact.

113. The first point to note is that the vast majority of individuals in Scotland work entirely within Scotland and so will have no need to be concerned about VBS, unless they are on a VBS barred list, in which case they also cannot do that type of regulated work in Scotland. But, equally important, is the need to comply with the law in the relevant jurisdiction. For example, work done in England, Wales and Northern Ireland must comply with the rules of VBS. There are important differences between VBS and the PVG Scheme, including a difference in the scope of regulated work (called regulated activity in VBS) and the rules about when checks are mandatory. For information about the legislation and guidance which apply in England, Wales and Northern Ireland, please refer to the VBS website<sup>10</sup>.

**Scope of the PVG Scheme**

114. The PVG Scheme can only be used in respect of regulated work in Scotland; it is an offence to use disclosure records for other purposes. The VBS should be used for regulated activity (which is the VBS equivalent of regulated work in England, Wales and Northern Ireland). Normally, the most appropriate check for any particular post will be determined by the employing organisation. This will mean that, in some cases, an individual will require to be a member of both the PVG Scheme and VBS.

**Sharing the lists**

115. Normally, an individual will be listed by either Disclosure Scotland or the Independent Safeguarding Authority (i.e. not both) but will then be barred across the UK. Disclosure Scotland has access to the Independent Safeguarding Authority’s lists and checks them in respect of PVG Scheme applications and members. This means that an individual cannot be a PVG Scheme member in respect of a type of regulated work for which they are listed anywhere in the UK, see chapter 8.

**Interacting with the Independent Safeguarding Authority**

116. The Scottish Government and UK Government have agreed the circumstances in which Disclosure Scotland leads on a listing case and the

<sup>10</sup> www.direct.gov.uk/vetting
circumstances in which the Independent Safeguarding Authority leads on a listing case, in order to avoid:

- double jeopardy – where an individual has the same information considered twice (may be years apart);
- double consideration - where an individual is actively under consideration for listing by both jurisdictions at the same time; and
- double barring - where an individual is included on two corresponding lists, for example, included on both the SVG adults' barred list and the PVG adults' list.

117. These issues are most likely to arise in respect of individuals who are members of both the PVG Scheme and VBS. For example, where an individual joins the VBS and the Independent Safeguarding Authority consider the vetting information and decide that the individual can join the VBS, that same information should not lead to the person being considered for listing under the PVG Scheme if he or she applies to join the PVG Scheme at a later date. The PVG Scheme should only consider new vetting information or vetting information that did not come to light when the SVG application was made.

**Recruiting individuals from overseas**

118. Individuals recruited from overseas to do regulated work in Scotland should be asked to join the PVG Scheme in the same way as individuals recruited from Scotland. The same checks will be performed by Disclosure Scotland to discover whether they are known to UK information sources and membership of the scheme will ensure that any new vetting information about them is picked up and dealt with quickly.

119. Disclosure Scotland cannot gather information on individuals from overseas. For advice on dealing with instances where overseas information might be required, refer to the Criminal Records Bureau's overseas advice web page\(^\text{11}\).

120. As with recruiting individuals from Scotland, organisations are responsible for safe recruitment practice, including checking identity, references, background and verifying documentation prior to appointment. Good recruitment practice guidance is available from various sources:

- [Safer Recruitment through Better Recruitment Guidance](http://example.com/safer-recruitment)
- [Safer Pre and Post Employment Checks - NHS Scotland](http://example.com/pre-post-checks)
- [Disclosure Scotland website](http://example.com/disclosure-scotland)
- [CRBS website](http://example.com/crbs)

\(^{11}\) [www.crb.homeoffice.gov.uk/faqs/overseas.aspx](http://www.crb.homeoffice.gov.uk/faqs/overseas.aspx)
121. The Scottish Government is working with the UK Government to improve the exchange of conviction information with other European countries and non EU countries that provide significant numbers of overseas workers to the UK. However, many countries have different justice systems and policies on retaining conviction information and there are significant challenges in translating and interpreting any information that could be provided. This work is therefore complex and will take some time to bring to fruition.

**Recruiting individuals to work overseas**

122. Basic, standard and enhanced disclosures can be issued for work abroad in certain circumstances. The Scottish Government proposes that PVG Scheme membership and disclosures should be available where Scottish organisations are recruiting individuals to do work abroad which would have been regulated work had it been done in Scotland. An example would be where a Scottish charity is recruiting an individual to teach children in Africa, an activity which would be within the scope of regulated work with children if it was carried out in Scotland. Disclosure Scotland is best placed to undertake disclosure checks for individuals being posted abroad, as any previous criminal history will be recorded in Scotland and not their host country. Unfortunately, this guidance is not able to be definitive on this point at the time of publication. Further advice will be posted on the Disclosure Scotland website.
Chapter 2: Regulated Work

2.1- Introduction

1. This chapter explains the concept of regulated work in order to help individuals and organisations to decide which positions fall within the definition.

2. It is not possible to provide a definitive list of roles, positions or types of employment that constitute regulated work, not least because the structure and descriptions of peoples’ work is constantly changing. Instead, 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. There are two types of regulated work:
   o regulated work with children; and
   o regulated work with adults.

3. The reason for having two types of regulated work, and two corresponding lists of individuals who are unsuitable to do such work, is to allow for the fact that unsuitability to work with one group does not always go hand in hand with unsuitability to work with the other (see chapter 8).

4. An individual may be doing both types of regulated work as part of the same job (e.g. doctor) or in different contexts (e.g. a teacher - doing regulated work with children - who volunteers with WRVS - doing regulated work with adults).

5. The Scottish Government believes that the definition of regulated work is broad enough to safeguard children and protected adults from unsuitable people who would harm them through their work, but narrow enough to be proportionate to this aim.

Why does it matter if an individual is doing regulated work?

6. It is an offence for an individual to do, or seek or agree to do, regulated work of the type from which they are barred. It is also an offence for an organisation to knowingly recruit an individual who is barred to do regulated work of the type to which the barring relates. However, it is a defence for the organisation to show that they did not know, and could not reasonably be expected to know, that the individual was barred. Conviction for either of these offences may result in a fine, imprisonment up to five years, or both.

7. Note that there is no equivalent offence for personal employers; they can ask anybody to do regulated work (but it would still be an offence for a barred person to do it).
8. In order to avoid committing the offence, organisations must work out whether or not the work they are asking an individual to do is regulated work and, if it is, should ask for one of the types of disclosure record discussed in chapter 1.

**How to assess whether an individual is doing regulated work**

9. There are five steps to assessing whether an individual is doing regulated work:
   
   (1.) **Is it work?** The meaning of work is explored in section 2.2.
   
   (2.) **Who are they working with?** The definition of child and protected adult is set out in section 2.3.
   
   (3.) **What do they do?** An explanation of regulated work with children is given at section 2.4 and regulated work with adults at section 2.5.
   
   (4.) **Is it their normal duties?** The meaning of normal duties is elaborated at section 2.6.
   
   (5.) **Are there any exceptions which apply?** There are some exceptions to what might otherwise be regulated work and these are explained at section 2.7.

10. It is suggested that these five steps are always followed in making any assessment; this process is illustrated in the case studies featured in this chapter. Note that not all steps are required in all cases.

**2.2 – Step 1: Work**

11. Work is defined at section 95 of the PVG Act and it has a very broad meaning as work of any kind. Work includes paid or unpaid work and other types of work. For the purposes of the PVG Scheme, being a foster carer is regarded as work. The carrying out of the functions of any statutory office is also work, as is caring for or supervising individuals who are participating in any organised activity. But work does not come within the scope of the PVG Scheme if it is done for an individual in the course of a family relationship; work also does not come within the scope of the PVG Scheme if it is done for an individual in the course of a personal relationship for no commercial consideration.

12. This means that a mother employing her brother to look after her child (a family relationship) does not constitute work for the purposes of the PVG Scheme, whether or not she pays her brother. However, a mother employing a friend to look after her child would not constitute work if there was no payment but, if the friend received payment, it would constitute work. In this latter case, it would be an offence for a barred individual to accept payment.
from the mother for babysitting (because it is regulated work) but not for the mother to employ the barred individual (because she is a personal employer).

13. Where a protected adult intended to employ and pay a friend to be a carer, for example, then the friend would be doing work and similar considerations apply.

14. Family has its dictionary meaning and includes parents, aunts, uncles, grandparents, siblings, children and grandchildren etc. But family relationship also includes a relationship between two individuals who live in the same household and treat each other as though they were member of the same family. This means that, for example, a child, his mother, her unmarried partner and his child all living in one house would all be regarded as having a family relationship.

15. With self-help or support groups, it is important to consider whether the individuals meet as friends to provide support and help to each other or whether it is a service provided by an organisation. A self-organised group of individuals getting together to support each other is not doing work. If the group asks an individual to lead it, the individual may be working (but the recipients will not be protected adults because the individual is not providing a care service of the type which would make the individuals protected adults).

**Case study C2.1**
**Children’s Football Team – transport**
A. Juan watches his son’s under 18s football team play every Saturday and has got to know some of the other parents. He has arranged with them to transport their children to the away games.

B. Assessment:
1. He is not working for the purposes of the PVG Scheme, as it is being done in the course of a personal relationship. It is not necessary to consider steps 2 to 5.

C. Answer: Juan is not doing regulated work with children.

**Case study C2.2**
**Children’s Football Team – transport**
A. Sayed has been asked to help out at his son’s under 18s football team. The team’s coach has arranged for Sayed to transport some of the team every second Saturday to the away games.

---

12 Section 95(5) of the PVG Act.
B. Assessment:
   1. Sayed is doing work because he has been asked to transport the children by the team coach. He is doing work even if some of the children are the children of friends or family.
   2. Sayed is working with children.
   3. Sayed is in sole charge of children when transporting them.
   4. It is his normal duties (because he has made an arrangement to do this).
   5. No exceptions apply.

C. Answer: Sayed is doing regulated work with children.

Case study C2.3
Family
A. Jane has two children and Jane’s sister, Helen, has one child. Jane and Helen run a family shop and work three days each per week. On the three days that Jane does not work, she looks after her own children and her nephew, and Helen reciprocates when Jane is working.

B. Assessment:
   1. Jane and Helen and their respective children are in a family relationship. Work done in the course of a family relationship is not work for the purposes of the PVG Scheme.
   2. It is not necessary to consider steps 2 to 5.

C. Answer: Neither Jane nor Helen is doing regulated work with children.

Case study C2.4
Friends
A. Jane and Helen ask a family friend, Jemima, to look after their children on days when neither can care for their children. Jane and Helen pay Jemima for child care.

B. Assessment:
   1. Although the work is done in the course of a personal relationship (a friend), the fact that Jemima is paid, means that she is doing work within the terms of the PVG Scheme.
   2. She is working with children.
   3. She is caring for children.
   4. It is her normal duties because she has made an arrangement with Jane and Helen to do this.
   5. No exceptions apply.

C. Answer: Jemima is doing regulated work with children.
Case study C2.5  
Friends

A. Helen has a friend Elaine. Elaine agrees to look after Helen’s son on an occasional basis but is not paid for doing so.

B. Assessment:
1. Elaine is not doing work because of the personal relationship between her and Helen, and the fact that no payment is being made to Elaine. It is not necessary to consider steps 2 to 5.

C. Answer: Elaine is not doing regulated work with children.

2.3 – Step 2: Defining children and protected adults


Child - definition
17. Section 97 defines a child as an individual aged under 18 years.

Protected adult - definition
18. Section 94 defines protected adult. A protected adult is defined as an individual aged 16 or over who is provided with (and thus receives) a type of care, support or welfare service. This definition of protected adult supersedes the definition of “adult at risk” used for the purposes of eligibility for enhanced disclosure. To be classified as an adult at risk, an individual had to meet three criteria: having a condition, in consequence of which they had a disability and received a care service. Section 94 replaces these three criteria with a test linked to the type of services being received by the individual. Protected adult is therefore a service based definition and avoids labelling adults on the basis of their having a specific condition or disability.

What services make a person a protected adult?
19. There are four categories of services receipt of any one of which makes an individual a protected adult:

1. Registered care services
   A service by a person carrying on:

---

13 Regulation 10(3) of the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006.
14 See section 94 of the PVG Act and the Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Services) (Protected Adults) Regulations 2010 (SSI 2010/161).
15 Registered under Part 1 of the Regulation of Care (Scotland) Act 2001.
(a.) a support service,
(b.) an adult placement service,
(c.) a care home service, or
(d.) a housing support service.

2. Health services
A service provided or secured by a public health body\textsuperscript{16} concerning the treatment, care and support of, and provision of advice and assistance to individuals in relation to health and well-being, or similar services provided by an independent health care service\textsuperscript{17} provider.

3. Community care services
Social work and mental health services provided or secured by a council, or self-directed support paid for by a council.

4. Welfare services
A welfare service includes any service which provides support, assistance, advice or counselling to individuals with particular needs, meeting the following conditions. The service must be a service that:

(a.) is provided in the course of work to one or more persons aged 16 or over,
(b.) is delivered on behalf of an organisation,
(c.) requires training to be undertaken by the person delivering the service,
(d.) has a frequency and formality attached to the service, and
(e.) either
   (i.) requires a contract to be agreed between the service provider and the recipient of the service prior to the service being carried out, or
   (ii.) is personalised to an individual adult’s needs.

More about welfare services

20. In order to qualify as a welfare service, the service must include all the mandatory elements (a) to (d) above and, in addition, one or other of the elements in (e).

21. With regard to “training” (paragraph (c)), this test may be met by training which is not specialist or related to a professional qualification. As a matter of good practice, organisations asking their workers to provide welfare services should ensure that those workers have, at the very least, some basic training. For

\textsuperscript{16} Acting in exercise of functions conferred by the National Health Service (Scotland) Act 1978.
\textsuperscript{17} Independent health care service is defined by sections 2(5) and 77 of the Regulation of Care (Scotland) Act 2001.
example, an organisation should train their workers to ensure that the worker is aware of:
  o the worker’s duties;
  o the client’s needs;
  o the standards of conduct, any code of practice or statutory duties;
  o how to escalate any concerns; and
  o where to turn for advice or guidance.

22. A “frequency and formality attached to the service” (paragraph (d)) means that the worker delivering the service should not be merely doing so on an informal, unforeseen or ad hoc basis.

23. Note that the service must be also provided to individuals with particular needs. Particular needs are those over and above the general needs that any individual might have. For example, the need for regular meals is a general need (everyone needs this) but the need for assistance in preparing meals is a particular need (only some people with, e.g. a disability, need that assistance). Similar arguments apply to: (for example) personal care, washing, cleaning, access to shops, services and social contact. Everybody shares the need for these things, but some individuals (with particular needs) require specific assistance with them.

Other consideratons

24. Most adults are likely to be a protected adult at some time in their lives, for example receiving treatment in hospital or receiving care in later life. But an individual is only a protected adult at the time they receive the service. For example, care home residents are protected adults at all times when they are in their care home. But other adults will only be protected for limited periods, for example, while receiving dental treatment.

25. This means that any services which are provided at times other than when the worker is present are not relevant to determining whether that worker is doing regulated work with adults. So there is no need to ask the adult any intrusive questions about their circumstances. For example, care home residents are protected adults at all times when they are in their care home, so any individual in contact with them is in contact with protected adults whatever the individual is doing. However, a person receiving outpatient chemotherapy is not a protected adult as a result of the treatment when they are not receiving that health service. So, for example, an individual providing other services to this person outside of the hospital context does not need to know about their outpatient chemotherapy to assess whether they are doing regulated work with adults or not.
**Child and protected adult overlap**

26. It is possible for 16 and 17 year-olds to be both children and protected adults. The assessment as to whether or not they are protected adults is no different to that undertaken in respect of any other adult.

---

**Case study C2.6**

**University Welfare Officer**

A. Alicia is a university welfare officer. Alicia provides advice, assistance and guidance to students. Alicia is working for a university and she has been trained specifically for the role she performs. Providing advice, assistance and guidance are Alicia’s normal duties. She provides these services frequently and in a formal setting. Because Alicia deals with a range of different issues from students, her interaction with them is specific to individuals needs.

B. Assessment:
   1. She is doing work.
   2. She is working with children as some students are still under 18. She is providing a welfare service, the receipt of which makes an individual a protected adult (for the duration of the time she spends with them). So she is also working with protected adults.
   3. She is caring for children and protected adults.
   4. It is her normal duties.
   5. Despite the fact that she is caring for some children, caring for them is incidental to the caring for adults. But she is caring for protected adults.

C. Answer: Alicia is doing regulated work with adults.

**Case study C2.7**

**Self-help Group**

A. Through a chance meeting on a bus, Derek and Dora get chatting. They discuss various things and realise that they both have the same minor health condition. This is being treated by their local GP but both agree that it was good to chat about it. They think that starting a self-help group might be beneficial. So they place an advert in their GP’s practice and get six replies from strangers. They contact the respondents and invite them along to an evening at a local church hall, which Derek and Dora lead. The purpose of the group is to exchange information and learn from personal experiences.

B. Assessment:
   1. Derek and Dora are doing work, as they are leading an event for strangers.
   2. They are not working with children, nor are they providing a service the receipt of which would make the attendees protected adults.
It is not necessary to consider steps 3 to 5.

C. Answer: Derek and Dora are not doing regulated work.

Case study C2.8
The chemotherapy patient
A. Lynn is receiving chemotherapy in cycles of one month of treatment followed by one month without treatment. She is a day patient and living in her own home. John is contracted by the Health Board to transport Lynn and other patients like her between her home and the hospital.

B. Assessment:
1. John is doing work.
2. John is providing a health support service secured by a public health body. Receipt of this service means that the patients are protected adults when in his vehicle.
3. John is in sole charge of protected adults (as they cannot leave his vehicle unless he allows them to do so).
4. It is his normal duties.
5. No exceptions apply. His being in sole charge of protected adults is not incidental as it is his provision of the service to them which makes them protected adults.

C. Answer: John is doing regulated work with adults.

Case study C2.9
The bowling club
A. Thomas runs the local bowling club as a volunteer, managing admission, mowing the lawn and doing whatever needs to be done. It is open to the general public, although the members are mainly elderly people.

B. Assessment:
1. Thomas is working.
2. It is possible that he may be working with children (although this is unlikely). He is not providing a service, receipt of which makes an individual a protected adult.
3. He is not undertaking any specified activity, nor working in a specified establishment nor position which would fall within regulated work. It is not necessary to consider steps 4 and 5.

C. Answer: Thomas is not doing regulated work.
Case study C2.10
Bowling for visually impaired people
A. Kathleen gets together a group of volunteers and they advertise a series of events to encourage blind or visually impaired adults to learn to play bowls. Kathleen is doing this under the auspices of her local bowling club. The intention is that each adult learner will have a volunteer helper, who will teach and instruct them. Kathleen arranges basic training for the volunteers before the first event.

B. Assessment:
1. Kathleen and the volunteers are doing work.
2. Protected adults are not defined by any vulnerability but by the services they receive. The volunteers could only be providing a welfare service. The service they provide: is to individuals aged 16 or over; is delivered on behalf of an organisation (the bowling club); has required some basic training; is a series of publicised events (frequency and formality); and specifically for the blind (tailored to individuals’ needs). Kathleen is therefore providing a welfare service and working with protected adults.
3. The volunteers are teaching and instructing protected adults.
4. It is their normal duties because it is their principal role in this volunteer work.
5. It is not incidental to teaching or instructing individuals who are not protected adults.

C. Answer: Kathleen and the volunteers are doing regulated work with adults.

2.4 – Step 3: Regulated work with children

27. Regulated work with children is defined at schedule 2 of the PVG Act. This schedule was amended in the summer of 2010\(^\text{18}\) and the amended version can be found at Annex A. The definitive reference point for regulated work with children is schedule 2 of the PVG Act (as amended) and this should be consulted in case of doubt. Schedule 2 was based on the definition of “child care position” in schedule 2 of POCSA but with a number of improvements, including clearer presentation and the introduction of the incidental test. It is important to note that by no means all individuals who come into contact with children through their work are doing regulated work with children.

28. This section focuses on work which may be within scope of regulated work with children:
(a) a position whose normal duties include carrying out particular activities;
(b) a position whose normal duties include work in particular establishments;

(c) particular positions of trust or responsibility; or
(d) 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.

29. It is important to read section 2.6 about normal duties and section 2.7 to see whether any of the exceptions apply. Note that normal duties qualifies: work carrying out activities; work in establishments; and day to day supervision or management of an individual carrying out those activities or working in those establishments. But it does not qualify the particular positions of trust and responsibility – an individual who works in one of those positions will always be doing regulated work. Where there are exceptions which apply to the type of work listed below, these are referenced by numbers in square brackets and further explanation can be found in section 2.7.

Activities
30. An individual may be doing regulated work with children if their work involves any of the following activities (as part of their normal duties):
   o Caring for children. [1], [2]
   o Teaching, instructing, training or supervising children. [1], [2]
   o Being in sole charge of children (see below). [1], [2], [3]
   o Unsupervised contact with children\(^{19}\) under arrangements made by a responsible person (see below). [1], [2], [3]
   o Providing advice or guidance to a child or to particular children which relates to physical or emotional well-being, education or training (see below). [1], [2]
   o Moderating a public electronic interactive communication service which is intended for use wholly or mainly by children (see below).
   o Providing, or working for an organisation which provides, a care home service\(^{20}\) which is provided exclusively or mainly for children. [4]
   o Providing, or working for an organisation which provides, an independent health care service\(^{21}\) which is provided exclusively or mainly for children. [4]
   o Work on any part of day care premises\(^{22}\) at times when children are being looked after in that part.
   o Being a host parent\(^{23}\) (see below).

\(^{19}\) Defined at paragraph 1A of schedule 2 as amended.
\(^{20}\) “Care home service” has the same meaning as in the Regulation of Care (Scotland) Act 2001.
\(^{21}\) “Independent health care service” has the same meaning as in the Regulation of Care (Scotland) Act 2001.
\(^{22}\) “Day care premises” means premises at which day care of children, within the meaning of section 2 of the Regulation of Care (Scotland) Act 2001, is provided.
\(^{23}\) See paragraph 2A and 11A of schedule 2 as amended.
Being in sole charge of children

31. Being in sole charge of children might include, for example: a contracted taxi or minibus driver taking children to school classes; the operator of a bouncy castle, where parents may be absent and the individual does have charge of what happens on the castle. It may also capture some aspects of school trips where a helper is not undertaking other kinds of activity which qualify as regulated work, for example escorting a group of children between venues.

Unsupervised contact with children

32. Unsupervised contact with children under arrangements made by a responsible person is regulated work with children.

33. The PVG Act defines “unsupervised contact with children” to mean contact with children in the absence of—
   (a.) a responsible person;
   (b.) a person doing regulated work with children by virtue of caring, teaching, instructing, training, supervising or being in sole charge of children; 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.

34. The PVG Act defines “responsible person” to mean, 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 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 section 2 of the Regulation of Care (Scotland) Act 2001;
   (e.) any person holding a particular position of trust and responsibility; and
   (f.) a charity trustee of a children’s charity.

35. Family relationship and personal relationship have the same meanings as in section 95 (meaning of "work").

36. Note that any contact with the child which is supervised by a person who has agreed to do so with the child’s parent, guardian or any other adult with whom the child lives is not unsupervised contact. The parent, guardian or adult resident must have agreed to the supervision of the contact by the friend or relative.
37. For example, suppose a voluntary organisation organises a pantomime trip by coach involving the organiser, adult A and the coach driver, adult B. If 30 children come along, 28 accompanied by a parent but two come unaccompanied, the provision referred to in paragraph 33(c) means that where the parents of those two children agree to nominate another person (perhaps another parent on the trip) to supervise their children in respect of contact with adults A and B that contact would not be unsupervised. This provision puts beyond doubt that no-one on the trip is doing regulated work with children, so long as each child is supervised either by a responsible person or by someone nominated by the responsible person for that child.

38. The meaning of “agreed” in the preceding example does not require such agreement to be in writing, but any organisation not requiring PVG Scheme membership on the basis of such agreement should make a contemporary record of it.

Providing advice or guidance to children
39. Providing advice or guidance to children covers positions such as workers on telephone advice lines and children’s magazine agony aunts. The provision does not cover general broadcasting to children, such as children’s television or radio programmes. Advice or guidance in relation to spiritual matters or spiritual well-being is considered to be captured by advice on emotional well-being and so is within the scope of this provision.

Moderating a public interactive communication service
40. The PVG Act states that a person moderates such a service if, for the purpose of protecting children, the person has any function relating to—
(a) monitoring the content of matter which forms any part of the service,
(b) removing matter from, or preventing the addition of matter to, the service, or
(c) controlling access to, or use of, the service.

41. But a person only moderates such a service as mentioned in sub-paragraph (b) or (c) if the person has—
(i) access to the content of the matter, or
(ii) contact with users of the service.

42. This covers positions such as those involved in moderating Internet chat rooms intended for use by children where the individual has a role in protecting those children from harm. It does not cover incidental use by children of chat rooms intended for use by adults. It does not cover staff involved in maintaining and supporting such services whose function is not related to child protection, e.g. engineers.
Being a host parent

43. Provision in respect of host parenting captures overnight accommodation provided in family homes as part of school exchange programmes and visits, trips or excursions arranged by many voluntary and private organisations. (Note that this does not include foster caring, for which specific provision is made elsewhere24.) Host parenting must fall within the definition of work, otherwise it cannot be regulated work (see section 2.2). So the provision applies both to arrangements made by a council, a charity or other organisation and to private hosting arrangements where this is for commercial consideration (that is, those made directly between the parent of the child and the host parent where this is not within the context of a family or personal relationship). But the provision does not apply to any arrangements made in the course of a family relationship (whether or not a payment is made) or in the course of a personal relationship for no commercial consideration, for example where the child stays over at a friend’s house.

44. To be host parenting, the overnight accommodation has to be provided as if the child were part of that person’s family. This excludes any person working in a hotel or B&B providing accommodation for children on a commercial basis on similar terms as they would for other clients.

45. The offences at sections 35 and 36 of the PVG Act do not apply to host parenting, as they do to other types of regulated work. This means that it is not an offence for an organisation to appoint a barred individual as a host parent but still allows organisations access to disclosure records, effectively making it a local policy decision as to whether or not to require such disclosure records from prospective host parents. Section 34 does still apply which means that it will always be an offence for an individual to work as a host parent if barred from doing regulated work with children. Organisations are still under the same duty to refer individuals who become unsuitable to be host parents as they are in respect of their employees and other workers (see chapter 6).

46. Individuals aged 16 or over living in the same household as the host parent(s) are not eligible for disclosures under the PVG Scheme but are eligible for enhanced disclosure25. In theory, the decision to check these individuals is not contingent upon the decision in respect of checking the host parent(s) but, in practice, there would need to be an extremely strong justification for checking these individuals if the host parent(s) themselves were not required to obtain a disclosure under the PVG Scheme.

---

24 At sections 95 and 96 and paragraph 26 of schedule 2 to the PVG Act.
47. In the past, there has been a variation in approach by organisations across Scotland on the checking of host parents, which was justified to the extent that it was a result of applying POCSA (which made no specific reference to host parenting) to the different circumstances of each case.

48. The PVG Act effectively gives organisations a free hand in determining whether or not to require PVG Scheme membership or disclosure records for host parenting activities. But organisations should exercise their discretion using a risk-based assessment and ensure that the measures are even-handed and fair. Organisations should:
   - apply coherent criteria to all potential host parents in the same way (i.e. not just require checks of only some parents who appear to be less suitable than others);
   - identify those criteria in advance and share them with potential host parents;
   - pay heed to any guidance or directions issued by relevant local bodies, such as local authorities; and
   - have regard to how other similar organisations manage similar host parenting activities.

49. Factors that organisations may wish to consider in determining whether to require PVG scheme membership for host parents include:
   - the duration of the stay;
   - whether the children have the opportunity to meet responsible adults other than the host parents on a daily basis (i.e. the opportunity to report concerns about the host parent to another responsible adult);
   - the views of the “sending” organisation / parents of the children; and
   - the age and vulnerability of the children.

50. Organisations should be careful about assuming that just because an individual has children of their own or has done host parenting before that these factors alone make them suitable to do host parenting.

**Establishments**

51. An individual may be doing regulated work with children if they work in any of the following establishments (as part of their normal duties):
   - An institution which is exclusively or mainly for the detention[26] of children. [6]
   - A hospital[27] which is exclusively or mainly for the reception and treatment of children. [6]

---

26 “Detention” means detention by virtue of an order of a court or under an enactment.
27 “Hospital” has the meaning given by section 108(1) (interpretation) of the National Health Service (Scotland) Act 1978.
o A further education institution\textsuperscript{29}. [6]
o A hostel used mainly by pupils attending a school or further education
institution. [6]
o A home which is exclusively or mainly for children and is provided by a
council under social work\textsuperscript{30} or mental health legislation\textsuperscript{31}. [6]

52. One exception applies to positions in all these establishments, namely that
such positions are not regulated work unless doing anything permitted or
required in connection with the position gives the person the opportunity to
have unsupervised contact with children. This is explained in section 2.7.

\textbf{Positions}

53. An individual \textit{is} doing regulated work with children if they hold any of the
following positions (note there is no normal duty qualification or other
exceptions which apply):
o Manager, or member of a governing body, body of trustees or other body
responsible for the management, of a school, further education institution
or hostel – as defined in establishments (but not a member of a council).
o Member of certain\textsuperscript{32} council committees, joint committees or sub-
committees concerned with the provision of education, accommodation,
social services or health care services to children,
o Member of a children’s panel or certain\textsuperscript{33} related committees.
o Chief social work officer of a council.
o Chief education officer (however called) of a council.
o Commissioner for Children and Young People in Scotland or member of
that Commissioner’s staff.
o Registrar of Independent Schools in Scotland.
o Foster carer\textsuperscript{34}.
o Charity trustee of a children’s charity (see below).

54. These positions cover work which might not otherwise be regulated work.
These are positions which, by their very nature, put the post-holder in a
position of power and trust in respect of children and those who work with
children and could enable the post-holder to demand access to children.
Additionally, some of these positions give the post-holder the power to

\textsuperscript{28}“School” has the same meaning as in the Education (Scotland) Act 1980
\textsuperscript{29}“Further education institution” means a body listed under the heading “Institutions formerly eligible
for funding by the Scottish Further Education Funding Council” in schedule 2 to the Further and
Higher Education (Scotland) Act 2005.
\textsuperscript{30}Section 59 (provision by councils of residential and other establishments) of the Social Work
(Scotland) Act 1968.
\textsuperscript{31}Section 25 (provision of care and support services by local authority) of the Mental Health (Care
and Treatment) (Scotland) Act 2003.
\textsuperscript{32}See paragraph 19 of schedule 2 for full details.
\textsuperscript{33}See paragraph 20 of schedule 2 for full details.
\textsuperscript{34}See paragraph 26 of schedule 2 and definition of foster carer at section 96 of the PVG Act.
influence or determine recruitment decisions or organisational policy and practice. A post-holder in one of these positions is doing regulated work with children without exception (i.e. there is no normal duties test and it is immaterial whether or not the post-holder is or is not covered by any other provision).

Charity trustee

55. All trustees of children’s charities are doing regulated work. The PVG Act defines a children’s charity\(^\text{35}\) as a charity whose—
(a.) main purpose is to provide benefits for children, and
(b.) principal means of delivery of those benefits is by its workers doing regulated work with children.

56. An individual works for a charity if the individual works under any arrangements made by the charity.

57. The main purpose of including “children’s charity” trustees within the scope of regulated work is because of the trust and access to children within and beyond the work of the charity itself which that position confers or would be assumed to confer by a lay person.

58. The definition excludes Higher Education Institutions. It also excludes all charities whose main purposes are aimed at adults or the population more generally. Finally, it excludes charities which deliver “indirect” benefits only, such as financial, legal or medical research. The definition of children's charities covers those charities which would most commonly be thought of as such.

\(^\text{35}\) Paragraph 27 of schedule 2.

Day to day supervision or management of workers doing activities or in establishments

59. An individual may be doing regulated work with children if they are responsible for the day to day supervision or management of an individual doing regulated work through the activities the individual performs or the establishments in which the individual works. But note this provision on supervision of an individual does not cover supervising an individual who is in one of the particular positions of trust or responsibility.

60. Individuals at one remove from the front-line, those with day to day supervision or management responsibilities for individuals doing regulated work are in a powerful position to safeguard (or harm) vulnerable groups by guiding or directing those individuals in their work.
61. A position is likely to include day to day supervision or management of an individual where:
   o the holder of the position is responsible for the management, supervision, appraisal, training and immediate welfare of the individual (but note that responsibility for the recruitment, discipline and dismissal may reside with a dedicated HR department in large organisations);
   o the holder of the position meets regularly with the individual to discuss and review the individual's work;
   o the holder of the position quality assures the individual's work (e.g. by being present on occasion or reviewing outputs); or
   o a person more senior than the holder of the position would hold that person responsible for any failing in respect of the individual's work.

Collective responsibility
62. Collective responsibility for a policy, process or organisation does not necessarily equate to collective responsibility for day to day supervision or management of workers. Even where the day to day supervision or management of an individual is the collective responsibility of a group, it is not the intention of the PVG Act that all members of the group are themselves doing regulated work and therefore expected to become PVG Scheme members. In such circumstances, it is preferable that one member of the group takes primary responsibility for the day to day supervision or management of the individual, at least in respect of the aspects of their work that are regulated work. It is also important to consider the “day to day” element of the test.

63. For example, a Kirk Session might have collective responsibility for youth work in a church. However, it is unlikely that many members have responsibility for the day to day supervision or management of the youth worker. It should be possible to allocate responsibilities such that only one of their number (one might expect this to be the Minister) is doing regulated work by virtue of this function.

Case study C2.11
Further Education College - Day Lecturer
A. Katrine is employed as a lecturer for day classes only at a Further Education College.

B. Assessment:
   1. Katrine is doing work.
   2. She is working with children.
   3. She is teaching them.
   4. It is her normal duties.
5. The classes are targeted at children so the incidental exception does not apply.

C. Answer: Katrine is doing regulated work with children.

**Case study C2.12**  
**Further Education College - Janitor**

A. Jon is employed as a janitor at a Further Education College.

B. Assessment:
   1. Jon is doing work.
   2. He is working with children.
   3. He is not carrying out any of the specified activities but he does work in a specified establishment.
   4. It is his normal duties.
   5. He does have the opportunity for unsupervised contact with children when doing anything permitted or required on connection with his position.

C. Answer: Jon is doing regulated work with children.

**Case study C2.13**  
**Children’s Football Team – refreshments**

A. On a weekly basis Laura helps out with her daughter’s football team. Laura’s role is to issue refreshments to the players at half time and full time.

B. Assessment:
   1. Laura is doing work.
   2. Laura is working with children.
   3. Laura is not doing any of the specified activities which fall within regulated work. She is not in sole charge of the children and she does not have unsupervised contact with the children. The serving of refreshments does not constitute “care”.
   4. It is not necessary to consider steps 4 and 5.

C. Answer: Laura is not doing regulated work with children.

**Case study C2.14**  
**Classroom parent helper at school**

A. Ailsa has been asked to be a parent helper at school. Ailsa will be assisting in the classroom every Wednesday afternoon during topic time. The teacher will be in the class at the time but Ailsa will have responsibility for completing various activities with small groups of pupils.
B. Assessment:
1. Ailsa is doing work.
2. She is working with children.
3. She is teaching and supervising children and working in specified establishment (school).
4. It is her normal duties.
5. She may not have the opportunity for unsupervised contact (depending on the arrangements made) but this is irrelevant as she is anyway carrying out specified activities of teaching and supervising children.

C. Answer: Ailsa is doing regulated work with children.

2.5 – Step 3: Regulated work with adults

64. Schedule 3 of the PVG Act defines regulated work with adults. This schedule was amended in the summer of 2010\(^\text{36}\) and the amended version can be found at Annex B. This definition replaces and expands the definition used for the purposes of eligibility for enhanced disclosure\(^\text{37}\). The criteria for enhanced disclosure for work with adults at risk were that the individual was working in a “position... of a kind which enables [them] in the course of his or her duties to have contact with an adult at risk”.

65. This section focuses on work which may be within scope of regulated work with adults:
   (a) a position whose normal duties include carrying out particular activities;
   (b) a position whose normal duties include work in particular establishments;
   (c) particular positions of trust or responsibility; or
   (d) a position whose normal duties include the day to day supervision or management of an individual doing regulated work with adults by virtue of the activities the individual carries out or work the individual does in establishments.

66. It is important to read section 2.6 about normal duties and section 2.7 to see whether any of the exceptions apply. Note that normal duties qualifies: work carrying out activities; work in establishments; and day to day supervision or management of an individual carrying out those activities or working in those establishments. But it does not qualify the particular positions of trust and responsibility; an individual who works in one of those positions will always be doing regulated work. Where there are exceptions which apply to the type of

\(^{36}\) The Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Adults) Order 2010 (SSI 2010/245).
\(^{37}\) Regulation 10(2) of the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (SSI 2006/96).
work listed below, these are referenced by numbers in square brackets and further explanation can be found in section 2.7.

67. Note that having access to financial or medical records or “sensitive” information is not regulated work (although may be eligible for standard disclosure).

**Activities**

68. An individual **may** be doing regulated work with adults if their work involves any of the following activities (as part of their normal duties):

- Caring for protected adults. [5]
- Teaching, instructing, training or supervising protected adults. [1]
- Being in sole charge of protected adults. [1]
- Providing assistance, advice or guidance to a protected adult or particular protected adults which relates to physical or emotional well-being, education or training. [1]
- Inspecting adult care services\(^{38}\) (including inspecting any premises used for the purposes of providing such services)

**Sole charge of protected adults**

69. Remembering that for an individual to be a protected adult, they must be in receipt of a health, care or welfare service, there are only limited circumstances where an individual is likely to be doing regulated work with adults only by virtue of being in sole charge of protected adults. These circumstances are most likely to be community bus or contract taxi services delivered as part of a health, care or welfare service. The drivers of such vehicles, if the protected adult is unaccompanied by a relative or carer, are likely to be in sole charge of protected adults.

**Establishments**

70. An individual **may** be doing regulated work with adults if they work in any of the following establishments (as part of their normal duties):

- A care home - meaning accommodation occupied mainly or exclusively by individuals aged 16 or over which is provided by an organisation carrying on a care home service\(^{39}\). [7]
- A residential establishment or accommodation occupied exclusively or mainly by individuals aged 16 or over which is provided by, or the provision of which is secured by, a council under social work\(^{40}\) or mental health legislation\(^{41}\). [7]

---

\(^{38}\) “Adult care service” is defined at paragraph 6 of schedule 3.

\(^{39}\) As defined in the Regulation of Care (Scotland) Act 2001.

\(^{40}\) The Social Work (Scotland) Act 1968.

\(^{41}\) Section 25 (provision of care and support services by local authority) of the Mental Health (Care and Treatment) (Scotland) Act 2003.
71. One exception applies to positions in all these establishments, namely that such positions are not regulated work unless:
   o doing anything permitted or required in connection with the position gives the person the opportunity to have unsupervised contact with protected adults; and
   o any 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.

72. This is explained in section 2.7.

**Positions**

73. An individual is doing regulated work with adults if they hold any of the following positions (note there is no normal duty qualification or other exceptions which apply):
   o Member of certain council committees, joint committees or sub-committees concerned with the provision of education, accommodation, social services or health care services to protected adults.
   o Chief social work officer of a council.
   o Charity trustee of certain charities (see below).

**Charity trustee**

74. All trustees of certain charities as defined in the PVG Act are doing regulated work with adults. These charities are whose—
   (a.) main purpose is to provide benefits for protected adults, and
   (b.) principal means of delivery of those benefits is by its workers doing regulated work with adults.

75. An individual works for a charity if the individual works under any arrangements made by the charity.

76. The provision mirrors that for regulated work with children (see section 2.4).

**Day to day supervision or management of workers doing activities or in establishments**

77. An individual may be doing regulated work with adults if they are responsible for the day to day supervision or management of an individual doing regulated work through the activities the individual performs or the establishments in which the individual works. But note this provision on supervision of an individual does not cover supervising an individual who is in one of the particular positions of trust or responsibility.

---

42 See paragraph 10 of schedule 3 for full details.
The discussion of day to day supervision and management in section 2.4 applies equally here.

Case study C2.15
The Manager
A. Joe works for a voluntary organisation which provides a befriending service. He does not do any befriending himself but he meets regularly with volunteers who do and is responsible for their training, well-being and is the person to whom they should report any concerns.

B. Assessment:

1. He is doing work.
2. He is working with protected adults (as these befrienders are providing a welfare service).
3. He is not carrying out any of the specified activities or working in a specified establishment. However, his duties indicate that he has day to day responsibility for supervising and managing the volunteer befrienders.
4. It is his normal duties.
5. No exceptions apply.

C. Answer: Joe is doing regulated work with adults.

Case study C2.16
Yoga teacher
A. Rebecca takes Yoga classes in her local scout hall and offers Yoga to adults in the community.

B. Assessment:

1. She is doing work.
2. She is not working with children. She is not providing a health, care or welfare service. She is not working with protected adults.
   It is not necessary to consider steps 3 to 5.

C. Answer: Rebecca is not doing regulated work.
Case study C2.17
A dental practice
A. A small dental practice has a dentist, a dental hygienist and a receptionist.

B. Assessment:
1. All are doing work.
2. All are working with children. In providing treatment to patients, both the dentist and dental hygienist are providing a health service, receipt of which means makes a person over 16 a protected adult.
3. The dentist and dental hygienist are providing care to children and protected adults. The dentist and dental hygienist also have unsupervised contact with children under arrangements made by a responsible person (the child’s parent). But the receptionist is not providing a health service nor has any caring responsibility nor has unsupervised contact with the children.
4. What they do, in all cases, is their normal duties.
5. There are no exceptions: the care provided to children is not incidental.

C. Answer: The dentist and dental hygienist are doing regulated work with children and regulated work with adults. The receptionist is doing neither (but is eligible for standard disclosure).

Case study C2.18
The Pilates teacher in a care home
A. Jan teaches Pilates classes in a care home. She is paid by individual residents. Jan’s class is always supervised by someone from the care home who is doing regulated work with adults.

B. Assessment:
1. Jan is doing work.
2. Residents in the care home are protected adults by virtue of receiving a care home service. Jan is working with protected adults (irrespective of what she does).
3. Jan is teaching protected adults. She is also working in a specified establishment (a care home).
4. It is her normal duties.
5. As she is supervised by somebody doing regulated work, she is not doing regulated work by virtue of being in the care home (she does not have the opportunity for unsupervised contact) but she is teaching protected adults and this is not incidental to teaching individuals who are not protected adults.

C. Answer: Jan is doing regulated work with adults.
Case study C2.19
The Pilates teacher
A. Jan offers a series of Pilates classes to the general public in a local church hall. The class attracts members of the public and some care home residents, from the home just round the corner.

B. Assessment:
1. Jan is doing work.
2. She is potentially working with children. She is not working with protected adults because the care home residents are not receiving a care home service at the time when Jan interacts with them (because they are outside the care home) nor is Jan providing a service receipt of which makes a person a protected adult.
3. She is potentially teaching children.
4. It is her normal duties.
5. Despite the fact that some children may attend the classes, teaching them is incidental to the teaching of the public in general.

C. Answer: Jan is not doing regulated work.

Case study C2.20
Help to live at home
A. A support worker, Joanna is employed by a local council to help adults to continue to live at home. Joanna makes meals and does other jobs around people’s houses, for which she has received some basic training.

B. Assessment:
1. Joanna is doing work.
2. Joanna is potentially providing a welfare service, receipt of which would make an individual a protected adult. The service she provides: is to individuals aged 16 or over; is delivered on behalf of an organisation (the local council); has required some basic training; is regular and by arrangement (frequency and formality); and is tailored to individuals’ needs. Joanna is therefore providing a welfare service and working with protected adults. For the period that Joanna is in their homes, the adults are protected adults.
3. She cares for protected adults.
4. It is her normal duties.
5. Her caring for protected adults is not incidental as it is her provision of the service to them which makes them protected adults.

C. Answer: Joanna is doing regulated work with adults.
Case study C2.21  
Counselling services  

A. David is a self-employed psychologist, offering counselling services to adults.

B. Assessment: 
1. David is doing work. 
2. David is, in effect an independent healthcare service provider providing care, advice and assistance to adults, thereby making them protected adults. 
3. David is providing both care and advice and assistance to protected adults. 
4. Even though he is self-employed, this is his (self-appointed) normal duties. 
5. His provision of care, advice and assistance to protected adults is not incidental as his provision of the service makes them protected adults.

C. Answer: David is doing regulated work with adults.

2.6 – Step 4: Normal duties

79. The concept of normal duties is extremely important in limiting the scope of regulated work. For an activity or work in an establishment to be regulated work, the carrying out of the activity or the work in the establishment must be part of the individual's normal duties.

80. Normal duties can be considered as something the individual might be expected to do as part of their post on an ongoing basis, for example appearing in a job description. Normal duties exclude one-off occurrences and unforeseeable events.

81. No particular frequency for undertaking the work or duration of work are specified in the Act as these will depend on the context.

82. An activity or work is likely to be “normal duties” when: 
   o it appears in an individual's job description, task description or contract (but these should not be manipulated to stretch the boundary of the PVG Scheme); 
   o it can reasonably be anticipated; or 
   o it occurs regularly.

83. An activity or work is unlikely to be “normal duties” when: 
   o done in response to an emergency (unless by an emergency worker); 
   o arranged at the last minute to stand in for sickness or other unexpected absence of another worker; or 
   o done as a one-off activity of short duration which is not part of the individual’s normal routine or occupation.
Examples

84. **The school plumber.** The specific plumber identified in a building firm as the individual who always does work on school premises because he has specialist knowledge of the central heating systems would be regarded as having that function as part of his “normal duties”, even if actual callouts occur quite infrequently. But a random plumber called in to a school for one emergency in respect of whom no prior arrangements had been made would not be regarded as working in a school as part of his “normal duties”.

85. **First aid.** An individual with identified responsibility for administering first aid at, for example, school sports events would be regarded as having this as (part of) their normal duties, however infrequently their services were actually required. But it is not normal duties where an individual (whether staff or public) responds to an accident by providing first aid on the spur of the moment.

86. **Santa Claus.** An individual who spends the six weeks running up to Christmas dressed as Santa Claus and operating grottos in various locations would be regarded as having this as their normal duties. However, the member of staff who is asked by the store manager to be Santa for the morning in that store would not be regarded as having this as their normal duties. Obviously, there are simple practical measures around lines of sight etc with regard to the setting up of Santa’s grotto which can help to minimise any (perception of) risk.

87. **Poet in a school.** A parent who is a poet who offers to run a one-off class on poetry for their child’s school (or any other school) would not be regarded as having this as their normal duties. However, if they were to run a series of classes in the same school or one-off classes for a number of different schools, then this would be part of their normal duties.

88. **Host parent.** Host parenting is defined as an activity for the purposes of regulated work with children. Any individual who has agreed in advance to undertake this activity would be regarded as having this as their normal duties, whether the activity lasts for one night or three weeks or occurs once only or on a regular basis. However, an individual who provides host parenting at the last minute, e.g. because one of the other host parents has to cancel because of illness, would not be regarded as having this as their normal duties. (See also paragraphs 43 to 50 on being a host parent.)

89. **Volunteer care and welfare work.** An individual who volunteers with WRVS would be regarded as providing welfare services as part of their normal duties, irrespective of how infrequently they undertake the activity.
90. Note that *pre-arranged* stand-ins or substitutes may also come within the scope of the PVG Scheme, if this has been formalised with them in advance.

**Case study C2.22**

**Ad hoc parent helper at school**

A. Mid-morning, Jenny receives a call from her daughter’s head teacher asking if she can help on a school trip that afternoon as one of the volunteers has phoned in unwell. Jenny agrees.

B. Assessment:
   1. Jenny is doing work.
   2. She is working with children.
   3. She is likely to be caring for, in sole charge of and having unsupervised contact with children under arrangements made by a responsible person.
   4. It is not, however, her normal duties as there was no way that the situation could reasonably have been foreseen. (But if the school had maintained a list of volunteers who could be called at short notice to help out and Jenny had featured on that list, then it would be her normal duties.)

   It is not necessary to consider step 5.

C. Answer: Jenny is not doing regulated work with children.

2.7- *Step 5: Exceptions to regulated work*

91. The following exceptions only apply in the specific circumstances set out in the previous sections. They **must** be read in that context.

[1] **- Incidental activity**

92. 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. For example, a teacher in a school is doing regulated work with children but a college lecturer running woodwork classes in the evening aimed at adults is outside the scope of regulated work, even if one or two children attend his class. This is because the presence of children (and the teaching of children) is incidental to the main activity and purpose of the class which is to teach adults.

93. An activity is likely to be incidental when:
   - open to all (characterised by where the event is held, where it is advertised, admission policy etc);
   - attractive to a wide cross-section of society; or
94. An activity is unlikely to be incidental when:
   o targeted at children or protected adults (characterised by where the event is held, where it is advertised, admission policy etc);
   o more attractive to children or protected adults than others; or
   o attendance is mandatory.

95. An important consideration is the degree to which it could be reasonably foreseen that children or protected adults would attend. Whether an activity is incidental or not is not so much about the numbers of children or protected adults attending but the purpose and intended client group for the activity. For example, an outdoor navigation skills day event advertised in a mountaineering magazine for the population in general may or may not attract some participants who are children. Whether the turnout is 5% or 50% children, the instructing of children is still an incidental activity.

96. The "incidental" qualification does not feature in the definition of child care position under POCSA. This means that some positions which have been eligible for enhanced disclosure are outside the scope of the PVG Scheme.

97. If an activity is believed to be incidental, but actually attracts an overwhelming majority of children or protected adults, then the issue of whether the activity is or is not incidental should be reviewed before the next year / term / season. However, it is not practical or appropriate to change the classification of an activity “in flight”.

[2] - Work with children themselves in work
98. Some activities are excluded from regulated work with children if they are carried out in relation to children aged 16 or 17 in the course of the children's work. This means, for example, that a shop manager recruiting or supervising children aged 16 or 17 as assistants (whether as employees or volunteers) is not within the scope of regulated work with children.

[3] - Work with children themselves in employment
99. Some activities are excluded from regulated work with children if they are carried out in relation to children under the age of 16 in the course of the children's employment. “Employment” is defined in section 97. Employment means paid employment whether under a contract of service or apprenticeship or under a contract for services. Work is much wider than employment in the PVG Act. This means, for example, that a shopkeeper employing a 14 year-

---

43 Paragraph 2(a) of schedule 2 to the PVG Act.
44 Paragraph 2(b) of schedule 2 to the PVG Act.
old to do a paper round is outside the scope of regulated work but a scout leader supervising a group of 14-year-old scouts calling door-to-door to do odd jobs for money is within the scope of regulated work.

Younger children on work experience

100. Individuals working with children aged 16 or 17 on work experience are exempt by paragraph 2(a) of schedule 2 as the children are themselves working. In respect of younger children on work experience (and who are not themselves employed), neither paragraph 2(a) or (b) of schedule 2 offers any exemption. But it is to be expected that most employees in the host organisation working with such children would not be doing regulated work because their interaction with the children would either: not be one of the activities; not be their normal duties; or be incidental. For example, any care offered to children on a work placement would have to be above and beyond what is normally provided to employees for this to be any more than incidental. In practice, only any individual(s) allocated special responsibilities for the children for the entire duration of their placement is (are) likely to be doing regulated work.


101. Some activities\textsuperscript{45} are only regulated work with children if doing anything permitted or required in connection with the position gives the holder of the position the opportunity to have contact with children. A cleaner, for example, in the head office of an organisation providing care home services would not be regarded as doing regulated work with children.

102. Contact usually means physical proximity. (However, in some limited circumstances it might also include remote communications such as telephone or e-mail.) Contact does not necessarily require being in the same room but does require a line of sight with the possibility of physical access or communication. For example, a window cleaner cleaning the windows on the outside of a care home would be regarded as being in contact with residents on the other side of those windows.

103. Opportunity for contact with children means that there is a reasonable expectation, but not necessarily certainty, of contact with children. For example, an individual who is walking down a school corridor during the school day has the opportunity for contact with children. Whether or not the opportunity materialises, i.e. whether the individual actually meets any children, will vary from instance to instance and is not relevant to the assessment.

\textsuperscript{45} Namely those at paragraphs 9 and 10 of schedule 2.
[5] - Incidental activity (caring for adults)

104. Remember that 16 and 17-year-olds can be both children and protected adults. This exception to caring for protected adults relates to an activity involving caring for protected adults under the age of 18 which is merely incidental to caring for children generally. Incidental activity is explained at [1] above. This application of the incidental test is different to the others, which apply it to the population in general, because receipt of care services makes an individual a protected adult. This exception excludes from regulated work with adults work which primarily involves caring for children.


105. Work in an establishment is not regulated work with children unless doing anything permitted or required in connection with the position gives the person the opportunity to have unsupervised contact with children. Unsupervised contact with children is defined in the PVG Act, see section 2.4 above.

106. The establishments identified in Part 3 were included in schedule 2 because they are places where there is the potential opportunity for workers having close proximity to children which would allow an unsuitable person the possibility of either “grooming” a child over a period of time or a more immediate physical or sexual attack.

107. Most "front-line" workers in these establishments will anyway be doing regulated work by virtue of their activities, especially: caring for children; teaching, instructing, training or supervising children; and being in sole charge of children. These provisions would capture teachers, nurses and doctors in children's hospitals, wardens in children's detention institutions etc, irrespective of work in establishments.

108. The PVG Act intends to capture those workers in establishments who are working in circumstances where the potential for grooming or immediate harm to a child is greater than they would be to members of the public. If an individual's normal duties in an establishment do not provide the opportunity for unsupervised contact, then it is hard to see how they are in a more privileged position than any member of the public (for example parents in the playground waiting to pick up their children) and therefore hard to see how they pose a greater risk.

109. The effect of this exception is twofold. Firstly, any individual working in an establishment, or part of an establishment, where no children are present is outside the scope of regulated work. Secondly, any individual working in an

---

46 Paragraph 2 of schedule 3 to the PVG Act.
47 Part 3 of schedule 2 to the PVG Act.
establishment where children are present but who is supervised is not by this fact alone within the scope of regulated work.

110. The phrase “doing anything permitted or required in connection with the position” precludes individuals who might have opportunity for unsupervised contact with children if they act outside their authority. For example, a builder who was permitted to work in a part of a school which was sealed off for refurbishment but who strays into a part of the school which is in active use is going beyond what is permitted or required of him. Such a person will have unsupervised access to children but poses no greater danger than any other unauthorised person. The appropriate protection here is the prevention of unauthorised access to facilities rather than access to PVG Scheme membership and disclosure records.

111. The exception takes out from the scope of regulated work, for example, a builder during renovation work in a school building over the summer holidays or outside school hours when there are no children present. It also excludes the postman who delivers to a school’s main reception every day but does not have unsupervised contact with children. Another exclusion might be the driver of the “gritting lorry” that comes round at 7 a.m. before any pupils have arrived.

112. However, positions such as a school caretaker or ward cleaner in a children’s hospital can reasonably be anticipated to provide the opportunity for unsupervised contact with children and these are within the scope of regulated work.

Parent Council meetings and other activities on school premises

113. Parent Councils, Combined Parent Councils or other parental bodies meeting in a school (or other educational establishment) either when there are no children present (e.g. evenings) or in the presence of a responsible person (e.g. a teacher or headmaster) are excluded from regulated work. However, Parent Councils, Combined Parent Councils or other parental bodies meeting in an educational establishment at times when children are present and in the absence of a responsible person are likely to come within the scope of regulated work (depending on the precise arrangements). But it should be possible for schools to make arrangements to ensure that parents attending Parent Council meetings are not doing regulated work with children by, for example, arranging for them all to be picked up from reception and taken to the meeting room.

114. An evening class for adults taking place on school premises would normally be ruled out from the scope of regulated work by this exception by virtue of the lack of opportunity for unsupervised contact with children.

115. Work in an establishment\(^{48}\) is not regulated work with adults unless:
   o doing anything permitted or required in connection with the position gives the person the opportunity to have unsupervised contact with protected adults; and
   o the 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.

116. The PVG Act defines “unsupervised contact with protected adults” to mean contact with protected adults in the absence of an individual doing regulated work within the establishment where the contact takes place (“a supervisor”). For work in establishments which does not involve any of the other activities (e.g. caring) to be regulated work with adults it must involve unsupervised contact.

117. Contact is unlikely to be unsupervised if:
   o a supervisor is in the same room; or
   o a supervisor has a line of sight on the protected adult(s) and / or the individual(s) whose work is being supervised.

118. Note that only one supervisor is required at any given instant, however many protected adults or other workers are in the vicinity (within reason). For example, a singer who regularly entertains the residents in the lounge of a care home where a PVG Scheme member (in respect of regulated work with adults) is present is not doing regulated work with adults, despite working in a care home.

119. Incidental contact is also excluded. For example, people such as tradesmen, window-cleaners and entertainers whose work is supervised or brings them into fleeting contact with residents are not doing regulated work.

120. Certain workers may still be doing regulated work, for example, administrative staff, gardeners or cleaning staff who can move freely around the building or grounds and have unsupervised contact with the residents as part of their normal duties. Of course, most front-line workers such as care staff, nurses and social workers will be undertaking regulated work as they will be carrying out relevant activities.

\(^{48}\) Part 3 of schedule 3 to the PVG Act.
Case study C2.23
Medical Secretary
A. Marion is a medical secretary in the cardiology department. She directs patients arriving at reception to the waiting area and answers their queries. She types up case notes and medical records for the department. She also takes telephone calls from patients about appointments and test results.

B. Assessment:
   1. Marion is doing work.
   2. She is working with children and protected adults.
   3. She is not carrying out any of the specified activities or working in a specified establishment which fall within regulated work.
   It is not necessary to consider steps 4 to 5.

C. Answer: Marion is not doing regulated work.

Case study C2.24
Yoga teacher
A. Rebecca is a Yoga teacher. Rebecca takes referrals from a GP for patients of all ages as part of a health recovery plan, contracted by the NHS.

B. Assessment:
   1. She is doing work.
   2. She is working with children. She is also providing a service the receipt of which makes the patients protected adults.
   3. She is teaching children and protected adults.
   4. It is her normal duties.
   5. No exceptions apply.

C. Answer: Rebecca is doing regulated work with children and regulated work with adults.

Case study C2.25
Women’s refuge
A. Denise works for a women’s refuge, set up and run by a voluntary organisation. Denise takes care of the children and provides support and counselling to the adult residents. She has received training.

B. Assessment:
   1. Denise is doing work.
   2. She is working with children. For her work with adults, an assessment has to be made about whether or not Denise is providing one or more of the
services, the receipt of which make an adult a protected adult. In this case, Denise is providing a welfare service. For the duration of the meetings with Denise, the adults in the refuge are protected adults.
3. She is caring for children. She is providing assistance, advice or guidance to protected adults.
4. It is her normal duties.
5. No exceptions apply.

C. Answer: Denise is doing regulated work with children and regulated work with adults.

Case study C2.26
The repairman
A. Arfan is a repairman on a call-out contract to a group of care homes. Arfan carries out any emergency repair work that may from time to time arise. This often involves being in residents’ rooms.

B. Assessment:
1. He is doing work.
2. He is working with protected adults.
3. He is not doing any specified activity but he is working in a specified establishment.
4. It is part of his normal duties (as it is specified in his call-out contract).
5. He does have the opportunity for unsupervised contact with protected adults as part of doing anything permitted or required in connection with his position (it is permitted that he works in residents’ rooms). The contact is not incidental as being in a resident’s room is an essential part of carrying out a repair, if that is where the fault occurs.

C. Answer: Arfan is doing regulated work with adults.

Case study C2.27
The Hairdresser
A. Olive is a self-employed hairdresser. Olive visits care homes to style the residents’ hair but she is not left alone with the residents.

B. Assessment:
1. Olive is doing work.
2. Olive is working with protected adults (because they are receiving a care home service).
3. Olive is not carrying on a specified activity as general hair cutting does not constitute “care” – an individual visiting a hairdresser in town is not being cared for. But she is working in a specified establishment.
4. It is part of her normal duties.
5. There is an exception which applies: Olive is always supervised by a member of staff, so nothing permitted or required in connection with the position gives her the opportunity for unsupervised contact with protected adults.

C. Answer: Olive is not doing regulated work with adults.

Case study C2.28
Further Education College - Evening Lecturer
A. Sasha is contracted as a lecturer by the council to give evening classes at a Further Education College teaching woodwork lessons open to the general public.

B. Assessment:
   1. Sasha is doing work.
   2. She is working with children. As she is not providing a health, care or welfare service she is not working with protected adults.
   3. She is potentially teaching children. She is also working in a specified establishment.
   4. It is her normal duties.
   5. If children attend these classes, their attendance is incidental as the class was aimed at the general public. Furthermore, as the classes are after hours, she should not have the opportunity for unsupervised contact with children attending the establishment.

C. Answer: Sasha is not doing regulated work.

Case study C2.29
University Lecturer
A. Louisa is university lecturer. Louisa teaches undergraduates and postgraduates. The university classes are aimed at the population as a whole but include some children in first year undergraduate classes.

B. Assessment:
   1. Louisa is doing work.
   2. Louisa is working with children.
   3. Louisa is teaching children (in some classes). A university is not a specified establishment.
   4. It is her normal duties.
   5. Despite the fact that some children attend university, teaching them is incidental to the teaching of adults.

C. Answer: Louisa is not doing regulated work with children.
**Case study C2.30**

**Administrative parent helper at school**

A. Graeme is a parent helper at school. One day per month he works with the school secretary assisting with uniform orders. Graeme’s role consists of taking payment from pupils and, once their uniforms are delivered to the school, he hands them out to the relevant pupils but does not fit them. He is based at the front reception office and is not allowed access to other parts of the school.

B. Assessment:
   1. Graeme is doing work.
   2. He is working with children.
   3. Graeme is not carrying out any of the specified activities but he is working in a specified establishment.
   4. It is his normal duties.
   5. As he will always be working with the school secretary (a responsible person, acting on behalf the headmaster) and is prohibited from wandering round other parts of the school, then nothing permitted or required in connection with his position gives him the opportunity to have unsupervised contact with children.

C. Answer: Graeme is not doing regulated work with children.

**Case study C2.31**

**The decorator**

A. Michael is a painter and decorator. He works in a wide range of establishments and premises, including homes, factories and offices. He has been contracted to work in a part of a care home that is sealed-off for refurbishment, but he has to walk through functioning parts of the home to get to the location of his work.

B. Assessment:
   1. Michael is doing work.
   2. The residents of the care home are protected adults because they are receiving in care homes service.
   3. Michael is not carrying out specified activity but is working in a specified establishment.
   4. It is his normal duties as he has been contracted to do that work.
   5. He does have the opportunity for unsupervised contact with protected adults as part of doing anything permitted or required in connection with his position (it is permitted that he walks through the functioning parts of the home). But any contact with protected adults in that area is only incidental.

C. Answer: Michael is not doing regulated work with adults.
Chapter 3: PVG Scheme Fees

3.1 – Levels of fee

1. There are fees for joining the PVG Scheme and requesting the different types of disclosure records\(^49\). Chapter 1 explains the different PVG Scheme disclosure records. The fees and the circumstances in which they are payable are set out in the Table below:

<table>
<thead>
<tr>
<th>Circumstance</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application to join the PVG Scheme (See para 2 below)</td>
<td>£59</td>
</tr>
<tr>
<td>Scheme Record</td>
<td>£59</td>
</tr>
<tr>
<td>But free of charge when requested at the same time as an application to join</td>
<td></td>
</tr>
<tr>
<td>Scheme Record Update</td>
<td>£18</td>
</tr>
<tr>
<td>Scheme Record requested by the same employer subsequently to a Scheme Record Update (See para 3, below)</td>
<td>£41 (that is £59 minus £18) if the subsequent application is made within 30 days of the Scheme Record Update being issued</td>
</tr>
<tr>
<td>Scheme Membership Statement</td>
<td>£18 (if requested in an application subsequent to the application to join)</td>
</tr>
<tr>
<td>Scheme Record or Scheme Record Update for volunteers working in a qualifying voluntary organisation in Scotland (See para 4, below)</td>
<td>Free of charge</td>
</tr>
</tbody>
</table>

\(^49\) The PVG Scheme fees are prescribed in the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 (SSI 2010/167).
2. If someone joins the PVG Scheme in relation to one regulated workforce, and then subsequently makes an application to join the scheme in relation to the other workforce, that second application will attract a further fee of £59 to join the scheme. If someone applies to join the Scheme for both workforces at the same time they will pay only one fee of £59.

3. Information on a Scheme Record Update may prompt an employer to wish to see all the information on the member’s Scheme Record. In these cases, provided the request for the Scheme Record is made by the same employer within 30 days of the Scheme Record Update being issued, the fee payable is £41, being the difference in fee between a Scheme Record Update and a Scheme Record. This effectively ‘tops up’ the fee already paid, so the total amount paid is the same as if there had been a single request for a Scheme Record. This means it is always worth asking for a Scheme Record Update first.

4. Volunteers working in regulated work in a qualifying voluntary organisation in Scotland can have their applications processed at no cost to themselves or their organisation. CRBS offer a service processing free checks for the voluntary sector and can provide more advice. Alternatively, qualifying voluntary organisations can register directly with Disclosure Scotland and still receive free checks. But the charges that apply for registration (see chapter 9) still apply.

5. For the PVG Scheme, a “qualifying voluntary organisation” is an organisation which-
   - is not a further education institution, a school, a public or local authority, or which is not under the management of a public or local authority; and
   - is not conducted primarily for profit, and any profit generated is used to further the objectives of the organisation and not distributed to its members.50

6. The second element of the definition excludes most private-sector businesses, large financial institutions and publicly listed companies.

**Students**

7. Simply doing unpaid work does not equate to being a volunteer. Students on placements are not volunteers as their work is mandatory (not voluntary) in the context of getting their qualification.

---

50 The meaning of ‘qualifying voluntary organisation’ is set out in regulation 7(2) of the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 (SSI 2010/167).
Volunteers moving to paid work

8. An individual whose application to join the PVG Scheme was as a volunteer in a qualifying voluntary organisation, and therefore in respect of which no fee was payable, will be treated in the same way as an individual who paid to the join the PVG Scheme in relation to subsequent disclosure requests for paid regulated work. For example, for an individual who obtained a free Scheme Record when recruited as a volunteer for a voluntary organisation, the fee payable for a Scheme Record Update for paid work for a council would still be £18.

3.2 – Payment: the individual or the employer

9. There are no set rules on who pays and payment can be made by either the individual or the organisation or personal employer requiring the disclosure. But Disclosure Scotland will not send out a disclosure record until the fee has been paid, except in cases where an arrangement has been made for an organisation to be invoiced (see chapter 9).

10. For a Scheme Membership Statement, which an individual would apply for if they want to join the PVG Scheme in anticipation of applying to do regulated work, or if a self-employed individual wished to have their own evidence that they are a PVG Scheme member, the individual will always pay the fee. They will also have to pay the higher level fee again if they subsequently apply for regulated work and the organisation wants access to their Scheme Record.

11. For a Scheme Record or a Scheme Record Update, an existing or prospective employer may pay the fee for the individual. Others may expect the individual to pay the fee themselves.

3.3 – Methods of payment

12. Most methods of payment are acceptable to Disclosure Scotland, but cash cannot be used. Disclosure requests can be paid for by credit or debit card, by cheque or by money order. Registered bodies can make invoicing arrangements with Disclosure Scotland.

3.4 – Refunds

13. A refund may be given in very unusual circumstances if an application cannot be processed by Disclosure Scotland, possibly because the identity of the individual cannot be confirmed. Refunds are not given for any of the following reasons:
o an individual being recruited by an organisation has turned down the job offer or otherwise not taken up the employment;
o the time taken to process the request and issue the disclosure record;
o the individual wishes to leave the PVG Scheme; or
o the individual does not like the information contained on a disclosure record.

14. However, where a disclosure record is found to contain inaccurate information (e.g. following a vetting dispute), a corrected disclosure record will be issued free of charge to whoever received the inaccurate version.

3.5 – The role of CRBS

15. CRBS plays an important role in helping voluntary organisations to access the benefits of the PVG Scheme, and especially the free checks that are available to volunteers doing regulated work for qualifying voluntary organisations. CRBS is part of Volunteer Development Scotland and is funded by the Scottish Government.

16. CRBS functions include:
o Enrolling voluntary organisations and acting as the registered body for them.
o Countersigning applications for scheme disclosures and forwarding them to Disclosure Scotland on behalf of enrolled organisations.
o Facilitating the return of disclosure records from Disclosure Scotland to enrolled organisations.
o Assisting voluntary organisations to assess the suitability of applicants to work with children and/or protected adults (if requested to do so).
o Advising voluntary organisations on broader measures of child and adult protection.

17. Enrolment with CRBS is free of charge as are all applications for disclosure records for volunteers doing regulated work for qualifying voluntary organisations. However, a charge is applied to each scheme application that is made on behalf of a paid staff member within the voluntary organisation.

18. For more information, contact CRBS:

Web: www.CRBS.org.uk
Post: Central Registered Body in Scotland,
      Jubilee House, Forthside Way, Stirling, FK8 1QZ
Telephone: 01786 849777
Case study C3.1
Fees – self-employed piano tutor

A. Timothy is planning to offer piano tuition to children in their own homes once he has completed his university course. He realises that this will be regulated work with children and that some parents (as personal employers) might want to check that he is a PVG Scheme member. He decides to make a unilateral application to join the PVG Scheme in anticipation of regulated work with children.

B. As he is joining the PVG Scheme, this will cost him £59. He will receive a Scheme Membership Statement which he can show to personal employers. This will state that he is a PVG Scheme member in respect of regulated work with children and whether or not he is under consideration for listing for the children’s list.

C. Some parents might want to see a more recent Scheme Membership Statement, especially if some time has elapsed since he received the original. In this case, they can request and countersign an application for another Scheme Membership Statement. This will cost £18 and a copy will go to the personal employer. It is a matter for Timothy and the personal employer to decide who pays the fee. Timothy can show his copy of the Scheme Membership Statement to other parents.

Case study C3.2
Fees – locum doctor

A. John, a doctor, does locum work for different Health Boards. He is already a PVG Scheme member in respect of both workforces. He has nothing on his Scheme Record nor does he do anything to result in any new vetting information arising.

B. Each time he is appointed to a new position by a new employer (a different Health Board), a Scheme Record Update should be requested. This will cost £18 each time. As there is nothing on his Scheme Record, the Scheme Record Update should be sufficient for each Health Board without sight of his Scheme Record.

Case study C3.3
Fees – voluntary work and move to paid work

A. Ahmed has done voluntary work in an adult care setting through an Islamic charity connected to his local Mosque. For this he received a Scheme Record at no charge. Separately, he has done voluntary work teaching children through a children’s charity. Again, for this he received a Scheme Record at no charge. He is a member of the PVG Scheme for both regulated work with children and regulated work with adults but has two separate Scheme Records one for each workforce and received at different times.
B. Ahmed is now training to be a social worker and has been asked for a disclosure record in respect of both types of regulated work. He asks for a Scheme Record Update which costs £18. The Scheme Record Update confirms that there is no vetting information on either his Scheme Record in respect of regulated work with adults or his Scheme Record in respect of regulated work with children, nor any new vetting information since. The Scheme Record Update is sufficient for his new employer and it does not matter that the Scheme Record was issued for voluntary work.
Chapter 4: Retrospective Checking and Re-checking Policies

1. It is the Scottish Government’s expectation that all individuals doing regulated work in Scotland should eventually become PVG Scheme members. Individuals recruited to do regulated work after the PVG Act comes into force should be asked to join the PVG Scheme. Over time, this will result in more and more individuals becoming PVG Scheme members. However, there are many individuals who will already be doing regulated work when the PVG Act comes into force and these people too will eventually join the PVG Scheme. The process of checking existing workers and bringing them onto the PVG Scheme is known as retrospective checking.

4.1 – Who should join?

2. From the go-live of the PVG Scheme, organisations should ask individuals being appointed to do regulated work to become PVG Scheme members. This is necessary to avoid the offence of offering regulated work to a barred person. Organisations should also continue with their existing re-checking policies in respect of individuals doing regulated work who are not PVG Scheme members. But organisations should not begin a new policy of retrospective checking of their workforce immediately.

4.2 – When should they join?

3. During the first year of the PVG Scheme’s operation, scheme membership applications should primarily be made by those people who are taking up a new position involving regulated work.

4. After the first year, Disclosure Scotland will work with organisations to manage the process of introducing existing staff doing regulated work into scheme membership. This is expected to take a further three years and will be managed in such a way as to minimise the administrative burden on both organisations and allow Disclosure Scotland to maintain its service standards. The process of phasing in scheme membership will be managed by Disclosure Scotland in partnership with its registered persons and bodies.

4.3 – What happens to existing workers who are barred?

5. An individual who is doing regulated work when barred is committing an offence from the go-live of the PVG Scheme. If this comes to light through the
process of retrospective checking or otherwise the matter will be reported to the police and could lead to prosecution.

6. It is possible that, when some members of the existing workforce apply to join the PVG Scheme, this will reveal information which leads to a consideration for listing and, possibly, inclusion in one or both lists. The consequences of being under consideration for listing or listed are explained in chapters 7 and 8.

4.4 – How will retrospective checking be enforced?

7. From the start of the PVG Scheme, it is an offence for an organisation to recruit a barred individual to do regulated work. However, it is a defence for an organisation charged with such an offence to prove that it did not know, and could not reasonably be expected to have known, that the individual was barred from doing that regulated work.

8. It is also an offence for an organisation not to remove an individual from regulated work when told by Disclosure Scotland that they are barred. But it is not an offence for an organisation to continue to employ a barred individual doing regulated work until such time as specified in the retrospective checking regulations. These regulations will be the subject of consultation in 2010-11 and can make different provision for different types of organisation and different circumstances. They will, in effect, set the time frame for organisations to get all their existing workers onto the PVG Scheme. The Scottish Government intends to set a four year time limit in these regulations but is considering a longer period for smaller organisations.

Case Study C4.1
Retrospective checking
A. I am a nurse working in a general hospital. Do I need to do anything now to comply with the Scheme?

B. No, there is no requirement for you to do anything immediately. If you change job in the near future you may be asked to join the Scheme at that stage. Alternatively, you will be asked to join the Scheme at some stage in the next few years when your employer undertakes retrospective checking. Your employer will provide the correct application form for you to complete at the appropriate time.

51 Provision for this is made in the Protection of Vulnerable Groups (Scotland) Act 2007 (Removal of Barred Individuals from Regulated Work) Regulations 2010 (SSI 2010/244).
Chapter 5: Sharing disclosure records

5.1 – Permissions and prohibitions

Normal use

1. A Scheme Record or Scheme Record Update is sent to the registered body which countersigned the application (the employer or umbrella body) and a copy of the disclosure is sent to the individual. A copy of a Scheme Record may be sent to the GTCS or SSSC in certain circumstances. A Scheme Membership Statement is sent to the individual and to the personal employer, where they countersigned such an application. The PVG Act creates 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 record.

Unlawful sharing

2. Section 66 makes it an offence for anybody to share somebody else’s disclosure records in order to ensure that the sensitive information is not shared unnecessarily. But see paragraph 3 below.

Lawful sharing within an organisation

3. It may be necessary to share the disclosure record with other employees, members and office holders within an organisation or where the disclosure has been requested on somebody else’s behalf, and this is allowed. Section 68 makes clear that the record should only be shared for the purposes of enabling the employer to determine suitability for regulated work. This is an important safeguard to ensure that employers only share disclosure information for legitimate purposes.

Lawful sharing by a PVG Scheme member

4. A PVG Scheme member may share their own disclosure record. So, for example, a Scheme Membership Statement obtained by a PVG Scheme member in respect of one personal employer may be shown by that individual to other personal employers. For example, a private dance teacher who is teaching a class of 20 children each Wednesday evening might be asked to obtain a Scheme Membership Statement by one of the parents. There is nothing to prevent that dance teacher showing the Scheme Membership Statement to every parent; there is no requirement to generate 20 Scheme Membership Statements, one for each parent, although this would be permitted (but would require 20 applications and 20 payments of fee).

52 The circumstances are where the individual is applying to join the PVG Scheme and requesting a Scheme Record and provides their GTCS or SSSC registration number on the application form.
**Unlawful requests for disclosure records – by employers**

5. Section 67 makes it an offence for anyone to attempt to see a disclosure record, or to use such a record other than for the purpose of checking an individual’s suitability to do regulated work\(^{53}\). It is an offence for employers who cannot legitimately ask for a disclosure record because they are not engaged in regulated work from requiring an individual to share the information on the record. For example, it would normally be an offence for a garage owner to ask mechanics in his garage if he could see their disclosure records, if they had obtained them for other purposes, since car repair work is not (normally) regulated work.

**Unlawful requests for disclosure records – by third parties**

6. Section 67 also makes it an offence for anyone other than an employer (a third party) to request provision of, or to otherwise seek sight of, a disclosure record other than in prescribed circumstances. In these circumstances, a third party may ask to see a disclosure record to enable them to assess the suitability of the individual to do regulated work in pursuance of an arrangement under which services are provided to that third party. The rest of this chapter describes the circumstances in which third parties can ask for sight of a disclosure record.

**5.2 – Third party access for commissioners of transport services**

7. Individuals who are members of the PVG Scheme, or who are asked to join it because they will be doing regulated work, may sometimes be asked to allow someone other than their employer to see their disclosure record. In general, to make such a request is not allowed. However, an exception is made where organisations that provide education or health services are contracting with a third party organisation to provide transport services to children or protected adults. The detailed provisions are set out in regulations\(^{54}\) but the four elements required for a valid request are summarised at paragraphs 8 to 11 below:

**Eligible transport services**

8. Transport services for which requests are permitted are those involving the transport of children or protected adults to and from:
   - schools or other educational establishments; or
   - hospitals, independent hospitals, private psychiatric hospitals, independent clinics or independent medical agencies.

---

\(^{53}\) But the meaning of suitability to be regulated work (etc) is expanded by section 73 and regulations made thereunder, including the Protection of Vulnerable Groups (Scotland) Act 2007 (Health Professionals) (Health Service Lists) Regulations 2010 (SSI 2010/191).

\(^{54}\) The Protection of Vulnerable Groups (Scotland) Act 2007 (Unlawful Requests for Scheme Records) (Prescribed Circumstances) Regulations 2010 (SSI 2010/194).
Eligible commissioning organisations
9. Only councils, schools, educational establishments, health bodies or independent health care services have the power to make this request and only in respect of eligible transport services (paragraph 8) they have commissioned.

Eligible contractors
10. An organisation, the contractor, must have entered into arrangements with an eligible commissioning organisation (paragraph 9) to provide eligible transport services (paragraph 8).

Eligible employees
11. Requests can only be made in respect of employees of eligible contractors (paragraph 10) who are doing regulated work. That is to say, this exception does not itself in any way extend the scope of regulated work.

Employees’ consent or otherwise to the request
12. The contractor can only show the disclosure record to the commissioning organisation if the employee concerned has given their consent in writing to the contractor. The consent should be given freely and not under duress. The contractor should keep a copy of this written consent. Disclosure Scotland is not involved in this arrangement.

13. The contractor must make clear to the employee that, if they give their consent, the commissioning organisation will have an opportunity to give their opinion on whether the employee is suitable to be used for the transport service contract.

14. Without consent, the commissioning organisation will have to make a decision about contract award or execution on the basis of other information provided by the contractor. That could include an assurance by the contractor that they are content that the staff who will provide the services under the contract are suitable to do so. But it will always be for the commissioning organisation to decide if that assurance from a contractor is acceptable to it.

Arrangements for sharing the disclosure record
15. Any disclosure record application will be countersigned by the contractor, who is their employer or potential employer, as normal. The commissioning organisation offering the transport contract plays no part in the request and does not receive a copy of any disclosure record direct from Disclosure Scotland. The employer must make appropriate arrangements to allow the commissioning organisation to see the disclosure record, bearing in mind the
sensitive nature of the disclosure and the very tight legal restrictions the PVG Act places on who is allowed to see it.

16. The commissioning organisation is not allowed to make or keep a copy of the certificate and must return the disclosure record as soon as the relevant decision is made.

**Bus driver example**

17. Consider, for example, a bus driver employed by a bus company (the contractor) contracted to transport children to school for a council (the commissioning organisation). A bus driver whose normal duties include transporting children to and from school unaccompanied by a responsible person, would normally be doing regulated work with children (being in sole charge of children). The bus company is employing drivers to do regulated work with children and would be expected to ask for Scheme Records / Scheme Record Updates. The bus company needs to fulfill its legal obligation not to employ a barred individual but would also be interested in any driving convictions on the Scheme Record. However, the council also has an interest in ensuring that the driver is suitable for this type of position because of its responsibilities towards children in its schools. The council may ask to see the bus driver's Scheme Record / Scheme Record Update without committing an offence, although the request can be refused by the bus driver. However, the council could then require that the bus driver is not used for its bus contract.

**Case Study C5.1**

**Transport Contract**

A. Mike owns four minibuses and employs four people – Alice, Brian, Colin and Derek – to drive them for him. All the vehicles and drivers are licensed for minicab operations and Mike also has several contracts to provide transport services for local hotels and guest houses.

B. Mike’s company has just been awarded the contract to provide the local Council’s school bus service to a small rural primary school.

C. The Council wishes to see disclosure information for all four of Mike’s drivers, as Mike proposes that any of them might be given the school bus duty from day to day. Mike is also aware that as his drivers will now be responsible for a bus-load of children, they will be doing regulated work with children and he should ask them to become PVG Scheme members.

D. Alice, Brian, Colin and Derek complete their applications for PVG Scheme membership and Mike countersigns their application forms. He also gets their written consent from Alice, Brian and Colin for the Council to see their disclosure, which he keeps on their personal files. Mike must not pass on any information he
sees on a disclosure record to a third party without the consent of the subject of the disclosure record. If he does, he will have committed an offence.

E. **Disclosure Scotland** sends each applicant a copy of their **Scheme Record**, and Mike receives four Scheme Records, one for each of his drivers. Mike arranges for the Council to see the disclosures of Alice, Brian and Colin.

F. Alice has a completely clear disclosure, no vetting information appears on it. Brian’s disclosure reveals a fine for a breach of the peace eight years ago and Colin’s disclosure contains details of an assault conviction that he received 12 years ago. The Council tells Mike that it is happy for Brian to drive the school minibus as the conviction is very minor, but it is not happy for Colin to do any driving on its behalf. Mike, on the other hand, is satisfied that Colin’s employment record with him has always been good, so he is happy to continue to employ him on other company duties, but he agrees with the Council not to provide Colin as a school minibus driver.

G. When Mike asks Derek to hand in his completed application, Derek says he will do so, but he is unwilling to give permission for the Council to see the disclosure. Derek does not need to give any reason for not giving permission. As a result, the Council says it is not happy for Derek to run the school minibus. Mike, however, is happy with Derek’s employment record and allows him to continue working on other company duties without a disclosure. Derek, however, cannot run the school minibus service.

H. It would be appropriate for Mike to discuss the consequence of refusal with Derek, and that might include covering the reason why Derek is refusing. It would not be appropriate for him to discuss the issue with the commissioning organisation. Issues about employment law that are beyond the scope of this guidance could arise if Mike cannot accept Derek’s approach.

**Case study C5.2**

**Dance teacher in a council-owned venue**

A. Gary hires a hall from his local council for the purpose of providing dance classes to teenagers on Thursday nights. Gary signs a contract with the council for venue hire.

B. Gary is doing a regulated work (teaching children). However, he is not doing regulated work for the council, nor is he providing them with a service. The council cannot ask him for a disclosure record nor countersign a disclosure application to this effect. Nor can the council ask for sight of any disclosure record he may have obtained otherwise (e.g. a Scheme Membership Statement that Gary may have
obtained). However, parents leaving their child with Gary for lessons would be entitled to ask for, or to see, a Scheme Membership Statement.

C. The council may wish to make clear that the hiring of its venues does not mean that they endorse the individual's suitability or otherwise to work with vulnerable groups, in the same way as they are not endorsing their professional competence (e.g. as a dance teacher).
Chapter 6: Referrals by Organisations

1. This chapter deals with the making of referrals by organisations, personnel suppliers, regulatory bodies and the NHS Tribunal. Court referrals are briefly mentioned in chapter 8.

2. The PVG Act aims to provide a robust system by which unsuitable people are prevented from doing regulated work with children or protected adults, and by which people who become unsuitable are identified. For it to work effectively, it is necessary for organisations to pass on information to Disclosure Scotland that indicates an individual may be unsuitable to do regulated work so that it can be properly evaluated and appropriate action taken.

3. The process of providing such information to Disclosure Scotland is called ‘making a referral’. The PVG Act places a duty on organisations and personnel suppliers to make a referral when certain criteria are met. Broadly speaking, the criteria are that: (a) an individual doing regulated work has done something to harm a child or protected adult and (b) the impact is so serious that the organisation has (or would) permanently remove the individual from regulated work. The first of these criteria is known as the referral ground.

4. The PVG Act gives organisations and personnel suppliers a power to make referrals where the criteria were met before the PVG Act comes into force.

5. Regulatory bodies and the NHS Tribunal have the power to make referrals, not least to cover circumstances where an organisation or personnel supplier could not, or negligently did not, make such a referral.

6. Making a referral is very important. Failure to refer an individual may mean that an individual who is unsuitable to do regulated work does not get barred from doing that type of work and can go on and harm other vulnerable people in other settings.

7. Personal employers cannot make referrals. If they have concerns about someone who is working for them, or who has worked for them, then they should raise the issue with the service provider or the police.

6.1 –Referral grounds

8. The PVG Scheme seeks to prevent vulnerable groups being harmed by those people who work with them. Sometimes an individual doing regulated work can become unsuitable to continue to do this work and this may be indicated by their conduct at work or outside of work. This should trigger a referral.
9. A prerequisite for any body to make a referral is that at least one of the referral grounds set out at section 2 of the PVG Act has been met. First of all, the individual must:
   - be doing regulated work;
   - have been doing regulated work; or
   - have been offered or supplied for regulated work.

10. Then the individual must have done something harmful or inappropriate in respect of a child or protected adult. But note that the harmful or inappropriate behaviour must correspond with the type of regulated work the individual does. For example, a schoolteacher (doing regulated work with children) who harms a protected adult does not meet the referral grounds. After a referral is made, Disclosure Scotland may place the individual under consideration for listing for either or both lists, irrespective of how the referral grounds are met. Therefore, it is not for organisations to “recommend” consideration for listing on one or other list as part of the referral process.

11. The harmful or inappropriate behaviour does not have to have taken place in the workplace, or be connected with that person’s work in any way. For example, someone who has taken inappropriate pictures of children on a beach or has stolen from an elderly and frail neighbour would meet the grounds for referral if the individual was doing regulated work with children or regulated work with adults, respectively.

12. The referral grounds for those doing regulated work with children and referral grounds for those doing regulated work with adults mirror each other. The subject of the referral must have done one or more of the following:
   - Harmed a child or protected adult.
   - Placed a child or protected adult at risk of harm.
   - Engaged in inappropriate conduct involving pornography.
   - Engaged in inappropriate conduct of a sexual nature involving a child or protected adult.
   - Given inappropriate medical treatment to a child or protected adult.

13. Concerns about a person’s professional competence, which do not constitute a referral ground, should be addressed by the relevant professional regulatory body. The regulatory body will decide whether the person is fit to continue doing that specific type of work with a particular client group. For example, a teacher who is not good at teaching is a matter for the General Teaching Council for Scotland and has no relevance in this context.

---

55 Section 10(4) of the PVG Act.
14. Where an organisation has concerns about an individual but cannot make a referral, they should consider involving the police, a regulatory body or inspectorate as appropriate. For example, a cinema might dismiss an usherette because of inappropriate behaviour involving children they come into contact with. The cinema cannot make a referral (as the individual was not doing regulated work with children) but should consider referring the matter to the police. In the case where the concerns were serious enough and sufficiently reliable (e.g. other employers had also reported concerns), the information may be disclosed as non-conviction information if the individual ever applied to join the PVG Scheme.

Meaning of ‘harm’

15. The meaning of the word harm is key to the first two grounds for referral. Harm includes:
   o physical harm;
   o psychological harm (for example: causing fear, alarm or distress); and
   o unlawful conduct which appropriates or adversely affects another person’s property, rights or interests (for example: theft, fraud, embezzlement or extortion).

16. The Act also provides a meaning for ‘risk of harm’ which includes:
   o attempting to harm another;
   o trying to get someone else to harm another;
   o encouraging someone to harm themselves; or
   o conduct otherwise causing, or likely to cause, another to be harmed.

17. When considering the terms ‘harm’ and ‘risk of harm’, it is important for individuals and employers to develop an understanding of what sort of actions might result in someone being harmed, or placed at risk of harm. Examples of harmful behaviours include:
   o Emotional abuse, perhaps by controlling a child with extreme verbal threats.
   o Neglecting a person’s needs, for example by inappropriate feeding or failing to provide appropriate sanitation.
   o Inappropriate physical restraint.
   o Failing to attend to whatever health and safety requirements may be in force.
   o Supplying illegal or unauthorised drugs.

18. While some of these examples might in the first instance lead to questions of professional competence being raised, they could lead to disciplinary action

56 “Harm” is defined at section 93 of the PVG Act.
being taken. The outcome from that action might require a referral to be made to Disclosure Scotland.

19. This is not an exhaustive list of things that may cause harm or place someone at risk of harm. Organisations may wish to consider how harmful behaviour may be guarded against in their own workplace policies and procedures. This can be done, for example, by making awareness of child and adult protection policies part of the induction of new staff to your organisation.

6.2 – Duties on organisations and personnel suppliers to refer

20. If, as a result of any of the referral grounds being met, an organisation dismisses an individual who was doing regulated work or transfers them to other duties that do not involve that type of regulated work, the organisation must make a referral. If the individual concerned has stopped doing regulated work for some other reason, the organisation must make a referral if it would or might have dismissed or transferred the individual on the referral ground. The duty to make a referral in these circumstances applies whether or not the individual is a member of the PVG Scheme.

21. The same duty applies if the individual stops doing regulated work and the organisation subsequently becomes aware of information which it was unaware of when the individual stopped doing regulated work. If the organisation considers that, if it had been aware of that information at the time and the individual had not stopped doing regulated work, it would or might have dismissed the individual on the referral ground, then it must make a referral.

22. The referral process to Disclosure Scotland is entirely separate from any dispute with the individual as to whether the dismissal was fair or otherwise. Even if a dismissal is challenged by the individual, the referral must still be made to Disclosure Scotland. Any findings of fact by an employment tribunal cannot be disputed as part of a consideration for listing. Sometimes it will be necessary for a consideration for listing case to be held pending the outcome of such proceedings.

23. The conjunction of both the referral ground being met and the action by the organisation to remove permanently the individual from regulated work ensure that trivial matters cannot be the subject of a referral. Harm covers such a broad range of incidents from flicking food at somebody to a serious violent assault. But the only harm which can lead to a referral is that which the organisation considers to be so serious that they have dismissed (or would dismiss) the individual on that basis.
24. The intention is that a referral should be triggered by an organisation permanently removing an individual from regulated work. Provision is made to accommodate referral grounds being identified after the individual has otherwise stopped doing regulated work. A temporary removal, such as suspension or temporary transfer, should not lead to a referral.

25. An employment agency is under a duty to make a referral in relation to an individual who is or has been doing regulated work if it has, on the referral ground, decided not to do further business with the individual, or not to find the individual further regulated work, or offer or supply the individual for such work.

26. An employment business is under a duty to make a referral in relation to an individual whom it has offered or supplied for regulated work if it has dismissed the individual on the referral ground, the individual has otherwise stopped doing regulated work in circumstances in which it would or might have dismissed the individual, or it has, on the referral ground, decided not to offer or supply the individual for further regulated work.

27. Organisations must make referrals when the criteria are met after the introduction of the PVG Scheme. But it does not oblige them to make a referral when the criteria were met before the introduction of the PVG Scheme. However, it does give organisations the power to make a referral about a historical incident if they wish to do so. For example, employers may be aware of situations they dealt with historically, before it was possible to make referrals to the children’s or adults’ list, which, if such an incident happened now, would result in the employer making a referral to Disclosure Scotland. If an employer decides to make such a referral, the employer would need to provide as much information as possible. There is no requirement that they inform the individual but it may be courteous to do so. The employer will not commit an offence for failing to refer an individual who was subject to disciplinary action before the PVG Scheme started.

28. It is for organisations to decide who within the organisation should be responsible for compiling a referral and being the point of contact with Disclosure Scotland throughout the process. In cases where the organisation is a registered body, the contact person could be the lead signatory or a countersignatory but it does not have to be. It could be another senior official in the organisation.

29. Making a referral does not in any way take away the need to involve the police if criminal behaviour is suspected. That could happen well in advance of the referral to Disclosure Scotland being made.
Failure to refer

30. It is an offence not to make a referral within 3 months of the criteria for referral being met. Failure to refer can result in a fine and a prison sentence of up to five years. Individuals within organisations may be prosecuted, alongside the organisation itself, if it can be demonstrated that the offence was committed with their consent, connivance or through their negligence.

6.3 – Powers for the regulatory bodies and NHS Tribunal to refer

31. Certain other persons have a power under section 8 of the PVG Act (as opposed to a duty) to make a referral about an individual who is doing or has done regulated work if they obtain information on the basis of which the body thinks that the referral grounds are met and a referral has not yet been made to Disclosure Scotland. The referral can be made about conduct which took place either before or after the PVG Scheme starts.

32. The bodies which can make a referral under section 8 of the PVG Act are:

- The General Chiropractic Council
- The General Dental Council
- The General Medical Council
- The General Optical Council
- The General Osteopathic Council
- The General Teaching Council for Scotland
- The Health Professions Council
- The Nursing and Midwifery Council
- The Royal Pharmaceutical Society of Great Britain
- The Scottish Commission for the Regulation of Care
- The Scottish Social Services Council
- The NHS Tribunal

33. These bodies should consider making a referral if they know that for some reason a relevant organisation, employment agency or employment business has not done so. They should not make a referral if they know that one has already been made, or is in the process of being made.

34. If Disclosure Scotland receives more than one referral over the same incident about the same individual, for example, if one of the regulatory bodies makes a referral when an employer has already done so, then it will combine all the information and consider it as a single case.

35. It is for the body making the referral to decide who within the organisation should be responsible for compiling a referral and being the point of contact
with Disclosure Scotland throughout the process. That person could be the registered person or a countersignatory but it does not have to be. It could be another senior official in the organisation.

6.4 – Referral information

36. The information which must be submitted to make a referral is set out in regulations\(^\text{57}\). Organisations or bodies making referrals are only required to supply the required information which they hold; they do not have to make further enquiries to find the information if they do not already hold it. Disclosure Scotland provides a standard referral form, along with guidelines for its completion, to assist organisations in ensuring they include all necessary information when making a referral. It is not mandatory to use this form although it will make the referral process easier for both the organisation and Disclosure Scotland if it is used.

37. The referral form includes space for all the prescribed information (which organisations must provide if they hold it) and space for other information (which is entirely discretionary). Providing this latter information is likely to help with the consideration process and reduce the need to request additional information from the referring organisation.

38. As they contain sensitive personal information, referrals should not be sent to the generic Disclosure Scotland postal address. Instead, referrals should be sent to a dedicated address (details of which will be available on the Disclosure Scotland website).

39. In brief, the information which must be submitted with any referral includes identity details relating to the individual; details about the referral ground; 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; and details of any action taken by the referring organisation.

40. Section 41 of the PVG Act provides protection from actions for damages for any organisation providing referral information to Disclosure Scotland in good faith. This means, for example, that a teacher who loses their job after being listed cannot sue any organisation who made a referral or provided supporting information for the consideration for listing process. It does not matter whether or not the decision to list is upheld on appeal. However, an organisation who,

\[^{57}\text{The Protection of Vulnerable Groups (Scotland) Act 2007 (Referrals by Organisations and Other Bodies) (Prescribed Information) Regulations 2010 (SSI 2010/181). Schedule 1 to these Regulations sets out the information required for referrals by organisations, employment agencies and employment businesses and schedule 2 sets out the information required from the regulatory bodies or the NHS Tribunal when they make a referral.}\]
knowingly or recklessly, provides untrue or misleading information to Disclosure Scotland is not protected from actions for damages. For example, an employer who makes malicious claims about an employee who has been dismissed in support of a referral is not protected.
Chapter 7: Consideration for Listing

1. When Disclosure Scotland receives information which has a bearing on an individual's suitability to work with vulnerable groups, Disclosure Scotland will undertake a two stage assessment process. The first stage is an initial assessment of the information to see whether it may be appropriate for the individual to be included in the children’s list and / or the adults’ list. Sometimes, the information will not meet the statutory tests for further consideration and will be dismissed at this stage.

2. If the initial tests are met, the second stage is a full assessment, called consideration for listing, in order to establish if the individual is unsuitable to work with vulnerable groups. This may take some months to resolve as information may need to be gathered from a number of sources and the individual must have the chance to comment on the information gathered. Whilst the individual is under consideration for listing, this information would appear on any disclosure record requested during that time. This chapter explains the triggers for consideration for listing, the process and the implications of this for individuals and employers.

7.1 – Triggers for consideration for listing

3. Disclosure Scotland can receive information about individuals who are doing or who have done regulated work from a variety of sources. Any one of these might be the trigger that causes the consideration for listing process to begin. Disclosure Scotland may receive:
   o a referral from an organisation;
   o a referral from a court;
   o new vetting information (that is, conviction or non-conviction information) about a PVG Scheme member; or
   o be made aware of an individual being named in a relevant inquiry report.

4. Note that any individual who is doing or has done regulated work (and in some cases, is likely to do regulated work) can be considered for listing, not just PVG Scheme members. However, vetting information can only trigger a consideration for listing in respect of PVG Scheme members (or applicants for membership). Furthermore, an individual who is a PVG Scheme member in respect of one workforce only can be considered for listing in respect of both workforces, depending on the circumstances.

5. If Disclosure Scotland is already considering whether to list someone in one list, they can also decide to consider whether to list that person in the other list.
if they receive information during the consideration process which indicates that this may be appropriate58.

**Organisational referrals**

6. The procedure to be followed by organisations in making a referral was explained in chapter 6. Organisational referrals lead to consideration for listing when the criteria set out at section 10 of the PVG Act are met:

   - Firstly, the organisation must have provided the required information to make a referral59. This ensures that Disclosure Scotland have sufficient identity information to be sure of whom they are considering and also the basic facts of the case against the individual.
   - Secondly, Disclosure Scotland must be satisfied that the information was not given for vexatious or frivolous purposes. For example, Disclosure Scotland will ensure that the referral was not made out of malice or spite (vexatious) or over a trivial incident where nothing untoward took place (frivolous).

7. A referral which passes these tests is said to be a competent referral. But before a competent referral leads to consideration for listing, Disclosure Scotland must also be satisfied that it may be appropriate for the individual to be included in the relevant list(s). Note that Disclosure Scotland may place the individual under consideration for listing for either or both lists, irrespective of what type of regulated work the individual was doing.

**Court referrals**

8. Where a court convicts an individual of a relevant offence (as set out in schedule 1 to the 2007 Act60), the court must give Disclosure Scotland any prescribed information61 that it holds in relation to the convicted individual. Section 11 requires that Disclosure Scotland must consider listing an individual in the children's list where the individual has been referred by a court following a conviction for a relevant offence (relevant offences are applicable only to the children's list and not the adults' list). This duty to consider an individual for listing is referred to as “automatic consideration for listing”. The prescribed information to be provided by the court will be used for the purposes of consideration for listing by Disclosure Scotland. Automatic consideration for listing on the children’s list following conviction of a relevant offence only applies to convictions after the coming into force of the PVG Act.

---

58 See section 12 of the PVG Act.
59 The Protection of Vulnerable Groups (Scotland) Act 2007 (Referrals by Organisations and Other Bodies) (Prescribed Information) Regulations 2010 (SSI 2010/181) – Schedules 1 and 2.
60 Schedule 1 as amended by the Protection of Vulnerable Groups (Scotland) Act 2007 (Relevant Offences) (Modification) Order 2010 (SSI 2010/246).
61 The information is set out in the Schedule to the Protection of Vulnerable Groups (Scotland) Act 2007 (Referrals by Courts) (Prescribed Information) Regulations 2010 (SSI 2010/182)
9. There is no schedule of relevant offences committed against protected adults which would lead to automatic consideration for listing on the adults list.

10. The courts also have a power to refer an individual for consideration for listing where that individual commits any offence other than a relevant offence (a “discretionary referral”). The court is required to be satisfied that it may be appropriate for the individual to be listed in the children’s list or in the adults’ list or both. Disclosure Scotland will consider this type court referral as they would any other referral if they are satisfied that it may be appropriate for the individual to be listed in the children’s list or adults’ list or both and that the individual does, has done or is likely to do regulated work with children or adults.

11. In all cases, the individual can only be listed following a consideration process (c.f. automatic listing – see chapter 8). Court referrals lead to consideration for listing when the criteria set out at section 11 are met. Court referrals will always allow the full circumstances of the case to be considered by Disclosure Scotland before making a determination as to whether or not an individual should be listed.

**Vetting information**

12. Vetting information leads to consideration for listing where the criteria set out at section 12 are met. Vetting information is explained in chapter 1. It includes: the details of convictions, any non-conviction information from the police, certain civil orders and whether the individual is a registered sex offender. Vetting information may trigger a consideration for listing when an individual applies to join the PVG Scheme or when new vetting information arises in respect of an existing PVG Scheme member.

13. The criteria for consideration for listing triggered by vetting information are that:
   o the vetting information indicates that it may be appropriate for the individual to be included on the children's list and / or adults’ list; and
   o the individual does, has done or is likely to do the corresponding type of regulated work.

14. The first criterion filters out new vetting information (e.g. driving convictions) which has no bearing on unsuitability to do regulated work. The second criterion is met by being a PVG Scheme member for that type of work. But this criterion can also be met by the individual having been a PVG Scheme member in the past or by an individual with a current application to join the Scheme. This criterion can also be met where there is other evidence of involvement with that type of regulated work outside of PVG Scheme membership.
**Named in a relevant inquiry report**

15. A relevant inquiry report leads to consideration for listing where the criteria set out at section 13 are met. The types of inquiry to which this section relates are set out at section 31 of the PVG Act. Firstly, the individual must be named in a relevant inquiry report. Secondly, it must appear to Disclosure Scotland from the report that the person who held the inquiry found that the referral ground (see chapter 6) was met when the individual was doing regulated work. Thirdly, the Scottish Ministers must apply the “may be appropriate” test before considering the individual for listing. It is expected that persons conducting relevant inquiries will highlight named individuals potentially within scope of this section to Disclosure Scotland at the earliest opportunity.

**7.2 – The consideration process**

16. The initial assessment following one of the four triggers for consideration may result in:
   - **Either:**
     - the individual being placed under consideration for listing on the children's list; **and/or**
     - the individual being placed under consideration for listing on the adults' list;
   - **Or:**
     - the case is dismissed and not progressed further.

17. If the case proceeds to under consideration for one or both lists, a Disclosure Scotland caseworker will examine the information it contains, request additional information from any relevant organisations as necessary, request information from the individual who has been referred, and if necessary seek specialist advice. The purpose of this is to assist Disclosure Scotland in its assessment of an individual's unsuitability to work with children or protected adults (or both groups).

18. An important principle enshrined in the PVG Act is that the individual who is under consideration for listing has the right to know the details of the referral that has been made against them and to see all the information on which a decision will be based. They also have the right to make a full written representation to Disclosure Scotland, giving any information they believe will be relevant, including explanation or rebuttal of anything contained in the referral. When an individual has submitted information which contradicts that provided by another source, this information will be passed onto that organisation so they may review it and provide further information or
clarification. The detailed determination procedure and time limits for making representations are set out in regulations62.

19. When the individual is first notified they are being considered for listing they will have 28 days to submit any representations and other information they wish Disclosure Scotland to consider. If Disclosure Scotland sends any additional information to the individual, it will inform the individual of the time limit for a response. The regulations allow Disclosure Scotland to grant extensions of time. The regulations also allow Disclosure Scotland to seek the views of experts on aspects of the case or to ask for the assessment by a group of suitably qualified individuals as to whether or not the individual is unsuitable to work with children or protected adults. The final step in the consideration process is to provide the individual with a copy of all of the information on which Disclosure Scotland intends to rely on in making its decision whether to list.

7.3 – Notifications

20. At the start and end of any consideration for listing (and this applies to each workforce separately), all interested parties will be notified of the decision in writing. The interested parties are:
   o the individual;
   o any organisation for which Disclosure Scotland knows the individual is doing regulated work; and
   o any relevant regulatory body.

21. For PVG Scheme members, any organisation which has requested a disclosure record in respect of the individual for the type of regulated work to which the consideration for listing relates will be notified63. This is one reason why it is important for organisations to apply for Scheme Record Updates and Scheme Records in respect of their workers, to ensure that they are notified of any consideration for listing. The exception to this is where the individual has ceased doing regulated work for that organisation and Disclosure Scotland has been notified of this, see chapter 1.

22. For PVG Scheme members, any relevant regulatory body for which the individual has provided a registration number on a disclosure application would be notified. Any other relevant regulatory body which has requested a disclosure record would also be notified. Relevant regulatory bodies are –
   o The General Chiropractic Council

63 Section 30 and 97(2) of the PVG Act read together require Disclosure Scotland to do this.
23. In any consideration for listing case (whether or not the individual is a PVG Scheme member), it may be obvious from information provided at the start of the consideration case, or during the progress of it, that certain organisations have an interest in the individual. In these cases, these organisations would also be notified.

24. Organisations should be aware that a notification of consideration for listing could come without warning. For example, a consideration for listing could begin as a result of a referral by another organisation. Usually, there would be no way of knowing that that was about to happen.

25. Inevitably, some organisations will receive notifications about consideration for listing after the individual to whom the notification relates has already left the organisation. This will usually be because neither the individual nor organisation has notified Disclosure Scotland of the individual’s departure. In such cases, the organisation should return the notification to Disclosure Scotland immediately with an explanation as to the circumstances. The organisation must not pass on the information to any other person. For example, the organisation must not pass on such a notification to the individual’s current employer. But it would be helpful to advise Disclosure Scotland of the existence of such an employer.

26. Note that personal employers are not notified of listing decisions but the police have access to the barred lists and can take action to ensure the individual no longer does regulated work. This might include contacting personal employers in some cases.

7.4 – Consequences of a consideration for listing

27. Placing an individual under consideration for listing is a serious step but it only means that an assessment of whether the individual is unsuitable to do
regulated work is underway; it is a temporary state of affairs. It may result in an individual being listed or it may not. One third of organisational referrals received under POCSA were dismissed prior to consideration for listing and, of those which proceeded, a further third were dismissed at final determination.

For individuals
28. A person who is under consideration for listing is not barred from continuing to do the corresponding regulated work and can continue to do regulated work. The individual should expect any organisational employer to be notified about the consideration for listing case and it is likely that the organisation will want to discuss it with them. The individual is under the same duty as a listed person to notify any changes to their name, address or gender (see chapter 8).

29. Where an individual is being considered for listing for one list only, this has no bearing on their status in respect of the other workforce. That is to say, whether they are a PVG Scheme member or barred in respect of the other workforce is entirely unaffected by being under consideration for the other list. For example, an individual under consideration for listing on the children’s list who is already on the adults’ list, may continue to work with children during the consideration process but their status as barred from working with protected adults is unaffected and remains in force.

For organisations
30. Organisations will be notified about individuals doing regulated work for them who are placed under consideration for listing in respect of that type of regulated work, as described in section 7.3 above. As the individual is not barred during the consideration process, the organisation with whom she or he is doing regulated work can continue to employ that individual to do regulated work during the consideration process.

31. Organisations should consider how to respond appropriately if they are notified that an individual doing regulated work for them has been placed under consideration for listing. Organisations should consider discussing the case with the individual and carrying out a risk assessment which takes account of all the circumstances of the case and the individual’s work. It may be appropriate to make some adjustments to the individual’s duties until the consideration case is determined. For example, there may be more supervision of the individual’s contact with vulnerable groups during this period.

32. Organisations may wish to seek advice on handling the case of a worker placed under consideration for listing. Organisations do not have any power
under the PVG Act to share the fact that an individual is under consideration for listing with other persons. Therefore, they may seek advice provided that they do not reveal, directly or indirectly, the identity of the individual in respect of whom the advice is sought. The action required to ensure anonymity will vary depending on the circumstances.

33. Each organisation listed as an interested party will be informed of the outcome of the consideration process. If the outcome is that the individual is placed on one or both lists, and is therefore barred from one or both kinds of regulated work, then the organisation must remove the individual from that regulated work and will be committing an offence if they fail to do so\(^\text{64}\).

34. If the outcome of the consideration process is that the individual is not barred, the organisation should not treat the individual any differently on the grounds of the consideration case than it did before. Any temporary change to the individual's duties resulting from a risk assessment following the notification of consideration for listing should cease, unless there are other reasons for maintaining the change.

35. Notification of dismissal of the consideration for listing case will include Disclosure Scotland's reason for this decision. However, the organisation may want to ask for a Scheme Record Update to see whether the consideration process has resulted in any new vetting information coming to light about the individual. The organisation is entitled to consider this information as part of its ongoing evaluation and management of those working for it.

For disclosure records
36. When an individual is placed under consideration for listing, this fact is added to their Scheme Record. If any disclosure records are issued while the consideration process is ongoing, the fact that the individual is under consideration for listing will be included on them. Organisations can recruit individuals under consideration for listing to do regulated work and, provided they have made a disclosure application, will be notified of the outcome of the process. If an organisation does recruit such an individual, they should follow the guidance set out above for organisations who are notified of a consideration for listing in respect of an existing worker.

37. Once a consideration for listing case is concluded, the under consideration status will no longer appear on any disclosure record. Note that the fact of a referral or a previous consideration for listing case does not appear on any disclosure record. If an individual is listed, they can longer be a PVG Scheme

---

\(^{64}\) The Protection of Vulnerable Groups (Scotland) Act 2007 (Removal of Barred Individuals from Regulated Work) Regulations 2010 (SSI 2010/244).
member for the type(s) of regulated work to which the listing relates and they will not be able to obtain corresponding disclosure records.

7.5 – The decision to list or dismiss the case

38. When Disclosure Scotland has gathered sufficient information on which to make a decision about the case, including any and all representations made by the individual, a decision will be made on whether or not to list the individual. Disclosure Scotland will follow a structured decision-making process which ensures that all the risk factors are identified and assessed appropriately and consistently. Sometimes, in particularly complicated or difficult cases, Disclosure Scotland will seek the views of experts on aspects of the case or ask for the assessment by a group of suitably qualified individuals as to whether or not the individual is unsuitable to work with children or protected adults. But the individual will have the opportunity to comment on any such report or assessment before any decision is made. The final decision rests with Disclosure Scotland.

39. Decisions as to whether to include the individual on the children’s list and / or adults’ list are made independently. So, where an individual is being considered for inclusion on both lists, the decision may be to include the individual on the children’s list but not to include them on the adults’ list, or vice versa. Normally, such decisions will be made at the same time, but they need not be.

40. Section 15 of the PVG Act deals with inclusion in the children’s list and section 16 deals with inclusion in the adults’ list. There is one test no matter what triggered consideration for listing. It is important to note that both tests rely on past conduct, i.e. an individual can only be listed on the basis of things they have done (evidenced through convictions, police intelligence, other vetting information, workplace incidents etc). No individual can be listed solely on the basis of anticipation of future conduct. The test applied at sections 15 and 16 is that used in civil proceedings, i.e. that on the balance of probabilities the individual is unsuitable.

41. All decisions will notified as described in section 7.3 above. Notifications of listing or dismissal will include Disclosure Scotland’s reasons for its decision and, in the case of listing, provide details of the individual’s right to appeal or apply for removal from the list.
Chapter 8: The Lists

1. The PVG Act requires two lists to be maintained: one which contains the names of all those individuals who are unsuitable to do regulated work with children; and another for those who are unsuitable to do regulated work with protected adults. This chapter explains how the lists are managed and how individuals may be added to, or removed, from them.

2. The lists are established by section 1 of the PVG Act, and the way in which they are operated runs right through the Act. An understanding of what the lists are and how they are managed is key to a full understanding of the PVG Act and how it affects people doing regulated work.

3. The PVG Act establishes two lists, as opposed to a single list for all work with vulnerable groups, in recognition of the differences in what makes an individual unsuitable to work with children or protected adults. Experience from elsewhere in the UK, where two lists have been operational for some time, is that there are significant numbers of individuals who should not be barred from both types of regulated work. Some types of case, such as those involving physical or sexual violence, indicate unsuitability to do either type of regulated work. But other cases, for example involving thefts from care home residents, may indicate unsuitability to work with protected adults but may not mean the individual should be barred from regulated work with children. A single list system would need to have a higher threshold for listing than a two list system, where the criteria can be tailored for each list. This would inevitably mean less protection for vulnerable groups.

8.1 – Meaning of “listed” and “barred”

4. Listing, in the context of the PVG Scheme, means the inclusion of an individual in the PVG children’s list or PVG adults’ list, maintained by Disclosure Scotland. Listing is the outcome of a consideration for listing process where it is determined that an individual is unsuitable to work with one or other vulnerable group or the result of automatic listing (see below). The Independent Safeguarding Authority maintains similar lists under the SVG Act for the rest of the UK.

5. Barring is the consequence of being listed. Normally, an individual will be listed by either Disclosure Scotland or the Independent Safeguarding Authority but barred across the UK. For example, an individual included on the SVG children’s list by the Independent Safeguarding Authority is barred from doing regulated work with children in Scotland.
8.2 – What are the children’s and adults’ lists?

6. The lists simply provide a means of recording the details of those people who have been found unsuitable to work with children or protected adults. One list records those who are unsuitable to do regulated work with children (the children’s list). The other records those who are unsuitable to do regulated work with protected adults (the adults’ list). An individual can be added to, or removed from, either list independently.

7. Individuals included on one of these lists (or otherwise barred) must not do the corresponding type of regulated work and cannot participate in the PVG Scheme in respect of that type of regulated work. Not only would any application to join the PVG Scheme by such a person be rejected, it would also be treated as evidence in respect of committing the offence of attempting to do regulated work whilst barred.

8.3 – The listing process

8. An individual may be included on one or both lists as a result of a consideration for listing or automatic listing. (Automatic consideration for listing only ever results from court referrals and is explained in section 7.1. Once the consideration for listing has begun, the process followed is no different than for any other consideration for listing case.)

Consideration for listing

9. The consideration for listing process is explained in Chapter 7.

10. Once all the information has been gathered and the individual has had the opportunity to make representations on it, Disclosure Scotland will determine whether it is satisfied by information relating to an individual’s conduct that the individual is unsuitable to work with children and / or protected adults. Listing decisions are made ‘on the balance of probabilities’, which is the same standard of proof required in civil proceedings. It is important to note that the test relies on past conduct i.e. an individual can only be listed on the basis of things they have done (evidenced through convictions, police intelligence, other vetting information, workplace incidents etc). No individual can be listed solely on the basis of anticipation of future conduct.

11. While an individual is under consideration for listing or listed, they are obliged to keep Disclosure Scotland updated about a change to their name, address or gender within one month of the change happening. Failure to do this is an offence.
**Automatic listing**

12. A conviction on indictment for certain crimes, such as rape and certain other offences involving non-consensual penetration, is considered so serious that it merits automatic listing. The offences that result in automatic listing are set out in an Order\(^{65}\) made under section 14 of the PVG Act. Automatic listing applies only to convictions after the coming into force of the PVG Act and leads to inclusion on both lists. An individual cannot make representations nor appeal the listing, when they are automatically listed.

**8.4 – Consequences of being listed**

13. It is an offence for someone placed on the children’s list to do regulated work, or attempt to do regulated work, with children. It is an offence for someone placed on the adults’ list to do regulated work, or attempt to do regulated work, with protected adults. However an individual included on only one list is free to continue to do regulated work with the group covered by the other list. Only those individuals who are placed on both the children’s and the adults’ lists are barred from regulated work with both groups.

14. All disclosure records issued by Disclosure Scotland will confirm that the individual concerned is not barred from the kind of regulated work they are applying for. If the disclosure application relates to only one workforce, the disclosure record will not reveal whether the individual is barred from working in the other workforce.

15. So, an organisation may apply to see an individual’s Scheme Record prior to offering them regulated work exclusively with children and will not find out if that individual is barred from working with protected adults. However, if the individual is barred from regulated work with adults, the information that led to the decision to place them on the adults’ list may still be included on the Scheme Record as vetting information (e.g. a conviction).

16. The organisation will be entitled to use that information as part of their recruitment process even though it did not result in the individual being considered unsuitable for work with children. The reverse is also true. An individual’s barred status on the children’s list will not be revealed to an organisation considering them for work exclusively with protected adults, but the information that led to the barring decision may still be revealed on the Scheme Record.

Penalties for individuals doing regulated work when barred

17. Any individual doing, or attempting to do, work from which they have been barred is committing an offence. It is a defence for the individual to show that they did not know, and could not reasonably have known, that they were barred, or that the work concerned was regulated work. On conviction on indictment the penalty is up to 5 years imprisonment and/or an unlimited fine.

Penalties for organisations offering regulated work to a barred individual

18. Organisations that employ barred individuals in regulated work with children or protected adults are committing an offence. It is also an offence for a personnel supplier to offer or supply a barred individual to an organisation. It is a defence for the organisation or personnel supplier to show that they did not know that the individual was barred. On conviction on indictment the penalty is up to 5 years imprisonment and/or an unlimited fine.

19. The only way to establish that an individual is not barred is to confirm that they are a PVG Scheme member. If an offence is suspected, then the organisation would be prosecuted but a relevant individual in the organisation can also be prosecuted. The decision about how to handle the practicalities of being notified that a member of their staff is barred will be for the organisation to make.

8.5 – Appealing against a listing decision

20. Individuals will receive guidance about the appeals procedure when they are listed. Anybody planning to appeal against a listing decision should consider taking independent legal advice. There is no right of appeal against automatic listing. However, an individual barred following automatic listing may apply for removal from the list as described in section 8.7.

21. At all times during the appeal process, the individual concerned will remain listed and unable to do any regulated work from which they have been barred.

The time limit

22. Appeals must be lodged within three months of Disclosure Scotland making a listing decision. A sheriff may extend the deadline for appeals if there is a good reason for doing so.

Grounds for appeal

23. Appeals may be made to a sheriff against Disclosure Scotland’s decision to list the individual on the children’s list or the adults’ list. An appeal is against the decision to list on the merits of the case. The sheriff has to be satisfied by information relating to the individual’s conduct that the individual is unsuitable
to work with children/protected adults in order for the individual to continue to remain on the list(s). The appeal will be heard by a sheriff who may agree to allow the hearing to take place in private.

24. No finding of fact on which a conviction is based can be challenged under the appeals process set out in the PVG Act. If a person is listed following a criminal conviction, the correct route is to appeal first against that conviction. Only if that appeal is successful can the individual concerned apply to Disclosure Scotland for removal on the ground of a change of circumstances.

**What the sheriff decides**

25. A sheriff who hears an appeal from an individual who has been placed on one of the lists will review all the information on which Disclosure Scotland based their decision. The sheriff may also hear personal representations from the listed individual. Having reviewed all the information, the sheriff will either be satisfied that the individual is unsuitable to work with children or protected adults and will confirm Disclosure Scotland’s decision to list the individual and the individual’s name will remain on the list, or where the sheriff is not so satisfied, the sheriff will direct Disclosure Scotland to remove the individual from whichever list they are on.

**Appeals where both lists are involved**

26. If an individual is named on both lists, an appeal may be made against one or both listing decisions. The sheriff may rule that the individual must either remain on one or the other or both lists or that Disclosure Scotland must remove the individual from one or the other or both lists.

**Further appeal against a listing decision**

27. Individuals who are unhappy with the outcome of an appeal to a sheriff may make a further appeal to the sheriff principal. The sheriff principal will review the case in the same way as the sheriff. Disclosure Scotland may also appeal to the sheriff principal, if it is unhappy with a sheriff’s decision. Individuals whose cases are further appealed in this way will remain listed throughout the process.

28. The decision of the sheriff principal is final, unless leave is granted to make a further appeal to the Inner House of the Court of Session on a point of law only. In such cases, the Court of Session’s decision is final.
8.6 - Late representations

29. Where an individual could not engage with the consideration for listing process, discussed in chapter 7 above, for example because the individual concerned could not be contacted and was unavailable to make their own representations during the consideration process, Disclosure Scotland must consider late representations from that individual. The details of the procedure for late representations are set out in regulations66.

8.7 – Applying to be removed from the list

30. An individual will be listed indefinitely. However, after 10 years, a listed individual may apply to Disclosure Scotland and ask to be removed from the list. If an individual was placed on the list(s) when they were aged under 18, they may apply to be removed after 5 years. Individuals may seek removal before the 5 or 10 year threshold is reached if they believe their circumstances have changed – for example, a conviction that led to their listing has been quashed.

31. Disclosure Scotland does not review cases automatically after they pass the 5 or 10 year threshold. It is up to the listed individual to make an application. When Disclosure Scotland receives an application for removal, it will launch a full consideration process that will result either in the individual being removed from the list, or else remaining on the list.

32. If Disclosure Scotland decides that the individual is not to be removed from the list, the individual can appeal to the sheriff against that decision. A sheriff who hears an appeal against a refusal to remove from one or both lists will review all the information on which Disclosure Scotland based their decision. The sheriff may also hear personal representations from the listed individual. Having reviewed all the information, the sheriff will either be satisfied that the individual is no longer unsuitable to work with children or protected adults and will direct Disclosure Scotland to remove the individual from the list, or where the sheriff is not so satisfied, the sheriff will refuse the individual’s application for removal and the individual will remain listed.

Further appeal against a decision to refuse to remove from the list

33. Individuals who are unhappy with the outcome of an appeal to a sheriff may make a further appeal to the sheriff principal. The sheriff principal will review the case in the same way as the sheriff. Disclosure Scotland may also appeal to the sheriff principal, if it is unhappy with a sheriff’s decision. Individuals whose cases are further appealed in this way will remain listed throughout the process.

34. The decision of the sheriff principal is final, unless leave is granted to make a further appeal to the Inner House of the Court of Session on a point of law only. In such cases, the Court of Session’s decision is final.

35. If the individual is removed from the list, the fact that they have previously been listed will not be disclosed on their Scheme Record. However, the information that led to them being listed could remain on their scheme record as vetting information such as a conviction and employers will continue to be able to use that information as part of their recruitment procedures. Information about a conviction that had been quashed would not be retained.
Chapter 9: Registration for Organisations

1. Organisations requiring access to Scheme Records and Scheme Record Updates must either:
   o register with Disclosure Scotland, which will enable them to countersign disclosure applications or requests; or
   o enrol with a registered body that can provide countersignatory services for them (known as an umbrella body, such as CRBS).

2. Organisations that are already registered with Disclosure Scotland do not need to re-register for PVG Scheme purposes. New registration arrangements are planned to take effect from 1 April 2011, although the revised regulations\(^{67}\) have not yet been considered by the Scottish Parliament. On-line functionality allowing registered bodies to manage their registration accounts with Disclosure Scotland will become available later in 2011.

9.1 – What registration means

3. Scheme Records issued by Disclosure Scotland may contain sensitive and personal information, including vetting information. The aim of protecting vulnerable groups from those who might do them harm through their work is supported by making this information available to organisational employers. However, in order to protect the rights and privacy of individuals to whom this information relates, it is important that this information is handled appropriately by those organisations to whom it is released. That is one purpose of registration.

4. Disclosure Scotland manages the registration process. Organisations applying to be registered bodies must have relevant personnel vetted and put in place robust procedures for handling disclosure records securely. There is a Code of Practice\(^{68}\) and accompanying Explanatory Guide (available from the Disclosure Scotland website) which covers the handling of disclosure information and sets out in detail what registered bodies need to do. Disclosure Scotland carries out audits of registered persons and bodies to check they are complying with the Code of Practice.

5. Each organisation which is a registered body needs to have a registered person who is Disclosure Scotland’s primary point of contact within that organisation. The registered person is also known as the lead signatory.

\(^{67}\) The Police Act 1997 (Registration) (Scotland) Regulations 2010.

\(^{68}\) Published by the Scottish Ministers under section 122 of the 1997 Act (and revised version to account for introduction of the PVG Scheme).
Other people in the organisation who can countersign disclosures are known as countersignatories.

9.2 - Action for existing registered bodies

6. Organisations that are already registered with Disclosure Scotland for the purposes of accessing enhanced disclosures do not need to re-register to access Scheme Records and Scheme Record Updates under the PVG Scheme. However, there are changes to the types of role and positions which are eligible for disclosure. For example, some work in child care positions under POCSA will not be regulated work with children. It may be that some organisations that accessed enhanced disclosure will not have access to Scheme Records. It would be helpful if such organisations advised Disclosure Scotland of this and were de-registered, if appropriate.

7. All organisations should regularly review whether any of their countersignatories are no longer performing this function and advise Disclosure Scotland of this fact. Disclosure Scotland will require this information as part of preparing for the new arrangements from 1 April 2011 (see below).

9.3 – New registrations for the PVG Scheme

8. Organisations that are not currently registered bodies may need to register to access Scheme Records and Scheme Record Updates under the PVG Scheme. Such organisations have not previously required enhanced disclosure but now (intend to) have individuals doing regulated work for them. Their need to register may be because:
   o the organisation is new;
   o the organisation has changed what it does;
   o the introduction of the adults’ list means that the organisation wants to do disclosures in respect of the adults’ workforce for the first time; or
   o the definitions of regulated work with children and regulated work with adults capture (some of) their workers for the first time.

9. An organisation wishing to register must contact Disclosure Scotland for an application pack. All applications must be made in writing and supported by proof of identity for the organisation, the prospective registered person and any other individuals who are nominated to countersign disclosure applications. The organisation will have to demonstrate that some of its workers are, or will be, doing regulated work. Until 1 April 2011, the cost of registering is a one-off charge of £150 and a further £10 for every countersignatory. (See section 9.7 below for arrangements after 1 April 2011.)
10. The organisation must nominate an appropriate individual to become its registered person and lead signatory. The lead signatory should be a senior figure within the organisation, with a level of management responsibility for those who make recruitment decisions. This individual does not have to be the person who will countersign most or all of the disclosure applications. Other individuals involved in recruitment or management may be nominated as countersignatories to do most of this work.

11. Alternatively, organisations can secure the services of an umbrella body to act as a registered body on its behalf. CRBS is the principal umbrella body for the voluntary sector.

9.4 - Setting up countersignatories in an organisation

12. Each countersignatory will be checked to ensure they are a person who is suitable to receive disclosure information. The lead countersignatory and the prospective countersignatory will be advised whether or not the nomination for inclusion in the register has been successful. Being a countersignatory is entirely distinct from PVG Scheme membership. That is, an individual does not need to become a member of the PVG Scheme in order to be a countersignatory. Equally, if they also do regulated work for their employer, then being a countersignatory does not exempt them from PVG Scheme membership for that purpose.

13. Countersignatory suitability checks are ongoing. If information comes to light that questions the suitability of an individual to remain a countersignatory, then that individual's right to countersign may be revoked.

14. When an individual is accepted as a countersignatory, they are issued with their registered body’s ID code and their own personal ID number which they must include on each disclosure application they countersign. This ID number should not be used by anyone else or for any other purpose. The ID number is only valid where it is used in conjunction with the countersignatory’s authorised signature. The registered person must keep Disclosure Scotland up to date with any changes to personal details of countersignatories in their organisation.
9.5 – Countersigning disclosure applications

15. When an applicant is asked to complete an application form by an organisation, either to join the PVG Scheme or for a subsequent request for a disclosure record, they should complete the relevant sections of the form. Once that is done, it should be returned to the organisation so that the registered body sections can be completed. Usually, someone in the same organisation will do the countersigning.

16. If the organisation does not have its own countersignatory, then it should send the completed application form to its umbrella body. The umbrella body will check and countersign the form before forwarding it to Disclosure Scotland.

17. Once a countersignatory signs the application form, it becomes a declaration that the application is legitimate. It also means that their organisation is properly registered, is entitled to receive the disclosure requested, that the disclosure will be used in accordance with the PVG Act or the 1997 Act, and the Code of Practice where the obligations about handling, storing and destroying etc are set out. It is an offence for a countersignatory to knowingly make a false statement to gain access to a disclosure record69.

18. A successful disclosure application will not only result in the issuing of a disclosure record to the organisation (and individual) but the organisation will also be logged as an interested party in respect of that PVG Scheme member. This means that the organisation will be notified about consideration for listing or listing of the individual (see chapter 7.3). Disclosure Scotland does not know whether an individual was recruited or not by an organisation after a disclosure record is issued. If the organisation does not recruit the individual, it would be helpful to advise Disclosure Scotland of this fact. On-line functionality for managing registered body accounts will make this very straightforward (see section 9.8).

9.6 – Duties on registered bodies

19. Organisations should pay close attention to the PVG Act, which states that disclosure record sent to the countersignatory may only be shared within the organisation where it is directly necessary as part of employee recruitment or retention decisions70. (See also chapter 5 for more information.) Therefore, organisations should consider carefully who is best placed to ensure their use of disclosure information is complying with the PVG Act. Organisations that lack in-house expertise may seek outside help in interpreting the vetting

---

69 Section 65 of the PVG Act.
70 Sections 66 to 69 of the PVG Act.
information that may be revealed on a scheme record, but if they do so they must not disclose the identity of the individual concerned.

9.7 – Changes from 1 April 2011: annual subscription

20. From 1 April 2011, all new registered bodies will pay an annual subscription for registration. There will be minimum annual charge of £75 for registration and that will cover the lead signatory and up to four countersignatories. Adding a new countersignatory during the course of the subscription year will cost £15 each, irrespective of how many existing countersignatories exist for the organisation. Removing a countersignatory or ending registration will not incur a fee.

21. Existing registered bodies will be migrated over to the new arrangements in a managed process. As part of that process, Disclosure Scotland will work with registered bodies to identify and remove inactive countersignatories on their account.

22. In advance of a registered body’s annual subscription falling due, Disclosure Scotland will provide them with a full list of their countersignatories and provide the opportunity to delete any that are no longer active. This will also allow the opportunity to update any other areas of the registration details that are inaccurate, for example, mailing addresses.

23. The purpose of introducing an annual subscription for registration is to place a duty on organisations on an annual basis to confirm the registration of all of their countersignatories, which will allow Disclosure Scotland to maintain accurate records and so reduce the possibility of fraudulent disclosure requests from individuals who are no longer employed in that capacity. Applying a small charge to the re-registration will provide an incentive to organisations to remove inactive countersignatories while the overall cost of re-registrations should, for most organisations, be small (89% of organisations currently registered with Disclosure Scotland have four or less countersignatories).

9.8 – Changes from later in 2011: on-line registered body accounts

24. Later in 2011, registered bodies will be able to manage their accounts with Disclosure Scotland on-line, if they wish. This will allow the lead signatory and countersignatories to log in and manage certain information through a secure web site.

25. Registered bodies will be able to:
- manage the lead signatory and countersignatory accounts and update personal information;
- create sub accounts and allocate countersignatories to these accounts – for example, a council might establish separate sub accounts for its education, housing and social work departments;
- view and pay invoices – which can subdivided by sub account; and
- remove their interest in a PVG Scheme member who no longer works for them.

**Case Study C9.1**

**Change of Registered Person**

A. Nurseries Ltd has recently recruited a new HR Director who will be taking over the role of registered person.

B. As this is a change to their registration, they must advise Disclosure Scotland. If the current lead signatory is no longer working for the company then, as an interim measure, an existing countersignatory could take on that role on a temporary basis. If that is not done, then all of the company's applications will be suspended until such time as a new lead signatory is approved.

C. The new HR Director will have to be checked as to whether or not she or he is a suitable person to receive disclosure information.

**Case Study C9.2**

A. There have been changes in personnel at Care Homes plc and they need to amend their list of countersignatories.

B. The people who are being removed as countersignatories will be removed as soon as the lead signatory formally advises Disclosure Scotland in writing. The effect for those people is that they will no longer be able to countersign applications for Care Homes plc.

C. The lead signatory asks those whom she wants to nominate as new countersignatories to complete an application form. She should then countersign each form and send them to Disclosure Scotland. The potential countersignatories will be assessed as to whether or not they are suitable people to receive disclosure information. Disclosure Scotland will advise the lead signatory and each potential countersignatory of the outcome of that assessment. For those who are suitable, Disclosure Scotland will write to them with the unique identification number for use on forms that they countersign. A charge of £15 will be made in respect of each new countersignatory application.
The guidance introduces a number of key words and phrases, which are summarised in this glossary. Terms marked with an asterisk have a statutory definition, mainly in the PVG Act (which itself has an index at schedule 5). Other terms have their normal dictionary meaning.

**Adults’ list***
The list maintained by Disclosure Scotland of individuals who are unsuitable to work with protected adults.

**Automatic consideration for listing**
A person who is convicted of any of the so-called “relevant offences” set out in schedule 1 of the PVG Act\(^{71}\) will automatically be placed under consideration for listing in the children’s list. There is no equivalent automatic consideration for listing in the adults’ list.

**Automatic listing**
A person who is convicted of any of the serious offences set out in the Order made under section 14 of the PVG Act\(^{72}\) will be automatically included in both the children’s and adults’ lists, without the right to make representation or to appeal the listing.

**Barring / barred***
Barring is the consequence of being listed. Normally, an individual will be listed by either Disclosure Scotland or the Independent Safeguarding Authority and they will then be barred across the UK. For example, an individual included on the SVG children’s list by the Independent Safeguarding Authority is barred from doing regulated work with children in Scotland.

**Care (for a child or protected adult)**
A position is likely to be regarded as caring if it involves responsibility for the:

- health of,
- guidance of,
- protection of,
- provision for, or
- welfare of

one or more children or protected adults.

---

\(^{71}\) As amended by the Protection of Vulnerable Groups (Scotland) Act 2007 (Relevant Offences) (Modification) Order 2010 (SSI 2010/246).

Central Registered Body in Scotland (CRBS)
The Central Registered Body in Scotland (CRBS) is a registered body that countersigns disclosures on behalf of voluntary sector organisations that require them, but are not registered bodies themselves. The majority of applications processed by CRBS are for free checks for volunteers working for qualifying voluntary organisations.

Child* (children)
‘Child’ means an individual under the age of 18.

Children’s List*
The list maintained by Disclosure Scotland of individuals who are unsuitable to work with children.

Civil orders
Civil orders are orders made by a court under civil, rather than criminal, proceedings and are usually designed to prevent some future harm to others. The civil orders included on the Scheme Record are:
   o a sexual offences prevention order (or interim order) under the Sexual Offences Act 2003 (“the 2003 Act”);
   o a foreign travel order under the 2003 Act;
   o a risk of sexual harm order (or interim order) under the 2003 Act;
   o a notification order (or interim order) under the 2003 Act; and
   o a risk of sexual harm order (or interim order) under the Protection of Children and Prevention of Sexual Offences (Scotland) 2005.

Contact
Contact usually means physical proximity and does not normally include remote communications such as telephone or e-mail. (However, in some limited circumstances it might also include remote communications such as telephone or email.) Contact does not necessarily require being in the same room but does require a line of sight with the possibility of physical access or communication. For example, a window cleaner cleaning the windows on the outside of a care home would be regarded as being in contact with residents on the other side of those windows.

Continuous updating
Once an individual becomes a member of the PVG Scheme, Disclosure Scotland will add any new vetting information to their scheme record as and when it arises, rather than simply collating information whenever a disclosure needs to be issued. Where that information suggests that the scheme member may have become unsuitable to work with children or protected adults, there will be a consideration of the case and if appropriate, the individual will be listed on one or both lists.
Consideration for listing
The process of determining whether an individual is unsuitable to work with children or protected adults, triggered by an organisational referral, court referral, vetting information or the individual being named in a relevant inquiry report.

Countersignatory
An individual within a registered body nominated by the registered person (a.k.a. lead signatory) to countersign standard, enhanced or PVG scheme disclosure requests on behalf of their organisation. The suitability of individuals to fulfil this function is assessed at initial registration and regularly reviewed.

CRB
The Criminal Records Bureau, an executive agency of the Home Office which provides a standard and enhanced disclosure service for England and Wales.

Day to day supervision or management
Individuals at one remove from the front-line, those whose normal duties include the day to day supervision or management of individuals doing regulated work (either carrying out activities or working in establishments) are also doing regulated work. This is explained in sections 2.4 and 2.5 of this guidance.

Disclosure certificate
Issued by Disclosure Scotland in response to an application for a basic, standard or enhanced disclosure under the Police Act 1997. A certificate is issued to the individual who requested it and a copy will also be sent to the person who countersigned the application if a standard or enhanced application was made.

Disclosure record*
Disclosure record means any Scheme Record, Scheme Record Update or Scheme Membership Statement issued under the PVG Scheme.

Disclosure Scotland
An executive agency of the Scottish Government. Disclosure Scotland has delegated authority to exercise the functions conferred upon the Scottish Ministers by Part 5 of the Police Act 1997 and the PVG Act. Disclosure Scotland provides a basic disclosure service across the UK, standard and enhanced disclosures to Scottish employers and operates the PVG Scheme and maintains the lists of those who are unsuitable to work with children and protected adults under the PVG Act.

DWCL
The Disqualified from Working with Children List established by POCSA,
**Employment agency***
An organisation that provides services with the aim of helping individuals to find employment, or helping employers find individuals to employ.

**Employment business***
An organisation that employs individuals and then supplies them to work for another organisation. This would, for example, include ‘temps’ supplied by a ‘temping agency’.

**GTCS**
The General Teaching Council for Scotland

**Harm***
Harm is defined at section 93 of the PVG Act and includes:
- physical harm;
- psychological harm (for example: causing fear, alarm or distress); and
- unlawful conduct which appropriates or adversely affects an individual’s property, rights or interests (for example: theft, fraud, embezzlement or extortion).

The PVG Act also refines risk of harm. Harm is explained in more detail in section 6.1.

**HMIE**
Her Majesty’s Inspectorate of Education

**Host parent***
Being a host parent is defined as an activity for the purposes of regulated work with children. This is explained in section 2.4 of this guidance.

**Incidental activity**
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. This is explained at section 2.7 of this guidance.

**Independent Safeguarding Authority (ISA)**
The Independent Safeguarding Authority is a non-departmental public body established to take decisions on suitability and manage the barred lists for England, Wales and Northern Ireland. It operates in partnership with the Criminal Records Bureau (CRB) which manages the list of people who are subject to monitoring under the VBS (equivalent to PVG Scheme members) and issues disclosures.

**Lead signatory**
This term is used to describe the Registered Person (the Registered Person is a person whose name is included in the register held by Scottish Ministers under
section 120 of the 1997 Act). It is an ordinary language expression which does not have a meaning in the 1997 or PVG Acts.

**Listing / listed**
Listing is the inclusion of an individual on a list or lists under the PVG Scheme or the VBS. Disclosure Scotland will maintain the PVG children’s list and PVG adults’ list. The Independent Safeguarding Authority maintains similar lists as part of the VBS.

**Non-conviction information**
Information which the chief officer of a relevant police force thinks might be relevant to the regulated work carried out by a scheme member. The information may relate to civil orders, fixed penalty fines, pending cases or police intelligence. This will appear on a Scheme Record when it is supplied by the chief officer of a relevant police force. Non-conviction information can also appear on those enhanced disclosures that will still be issued under the 1997 Act.

**Normal duties**
The concept of normal duties is extremely important in limiting the scope of regulated work. For an activity or work in an establishment to be regulated work, the carrying out of the activity or the work in the establishment must be part of the individual's normal duties. Normal duties can be considered as something the individual might be expected to do as part of their post on an ongoing basis, for example appearing in a job description. Normal duties exclude one-off occurrences and unforeseeable events. No particular frequency for undertaking the work or duration of work are specified in the PVG Act as these will depend on the context. This is explained further at section 2.6 of this guidance.

**Opportunity (for contact)**
Opportunity for contact means that there is a reasonable expectation, but not necessarily certainty, of contact with children / protected adults. This is explained further at section 2.6 of this guidance.

**Organisation**
An organisation means –
- a body corporate or unincorporated;
- an individual, who in the course of a business, employs or otherwise gives work to other persons;
- the governing body, trustees or other person or body of persons responsible for the management of a school, a body listed in schedule 2 to the Further and Higher Education (Scotland) Act 2005 or a hostel mainly used by pupils attending such a school or body
Particular needs
For a service to be a welfare service (for the purposes of making an individual receiving the service a protected adult), the service must be provided to individuals with particular needs. Particular needs are those over and above the general needs that any individual might have. For example, the need for regular meals is a general need (everyone needs this) but the need for assistance in preparing meals is a particular need (only some people with, e.g. a disability, need that assistance). See also section 2.3 which explains the definition of protected adult.

Personal employer
An individual (i.e. not an organisation) seeking to employ another individual to undertake regulated work, for example as a nanny or a home help or private music teacher. Personal employers can ask to see Scheme Membership Statements or countersign an application for one and receive their own copy.

Personnel suppliers*
An employment agency or an employment business.

POCSA

Police Act 1997
The legislation under which Disclosure Scotland issues basic, standard and enhanced disclosures, and which makes provision for the registration of organisations, lead signatories and countersignatories.

Police intelligence
Information held about an individual by police for operational policing purposes. Intelligence, or a summary of it, might form part of the non-conviction information submitted to Disclosure Scotland for inclusion in an individual’s Scheme Record.

Protected adult
A person (aged 16 or over) protected by the PVG Act because they are receiving certain services as set out at section 94 of the PVG Act and regulations. The details of the services and how they apply are set out in section 2.3 of this guidance.

PVG
Reference to the Protection of Vulnerable Groups (Scotland) Act 2007 or Protecting Vulnerable Groups Scheme, depending on context.

---

73 The Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Services) (Protected Adults) Regulations 2010 (SSI 2010/161).
PVG Act
The Protection of Vulnerable Groups (Scotland) Act 2007.

PVG Scheme*
Any individual who is not barred may apply to become a member of the PVG Scheme. The PVG Scheme is administered by Disclosure Scotland and allows organisational employers and personal employers to satisfy themselves that an individual to whom they are offering regulated work is not barred from doing that type of regulated work. The PVG Scheme provides three different disclosure records for this purpose, which replaces the use of standard and enhanced disclosures for work with vulnerable groups. PVG Scheme members are continuously monitored for new vetting information and any information which comes to light which may indicate that they are unsuitable to do regulated work will lead to a consideration for listing.

Qualifying voluntary organisation
Volunteers doing regulated work for qualifying voluntary organisations are eligible for PVG Scheme membership and disclosure records at no charge. A qualifying voluntary organisation is defined in regulations74. It is an organisation which-

- is not a further education institution, a school, a public or local authority, or which is not under the management of a public or local authority; and
- is not conducted primarily for profit, and any profit generated is used to further the objectives of the organisation and not distributed to its members.

This is explained further in chapter 3 of this guidance.

Refer* / referral
The process of providing information to Disclosure Scotland when an individual’s behaviour has given cause for concern and certain conditions set out in the PVG Act have been met. Some organisations are under a duty to make referrals and others have a power to do so. This is explained at chapter 6 of this guidance.

Registration
The process whereby an organisation becomes a registered body and so able to countersign disclosure applications in its own right. (Not to be confused with registration under the VBS for England, Wales and Northern Ireland which is used to describe the process of applying to become a VBS Scheme member.)

Regulated work*
Regulated work means regulated work with children or regulated work with adults. Regulated work with children is defined at schedule 2 to the PVG Act (Annex A) and

74 Regulation 7(2) of the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 (SSI 2010/167).
regulated work with adults as defined at schedule 3 (Annex B). Regulated work is explained in chapter 2.

**Regulatory body**
Regulatory bodies maintain standards for the profession(s) they regulate. There are 11 regulatory bodies referred to in the PVG Act. These are: the General Chiropractic Council, the General Dental Council, the General Medical Council, the General Optical Council, the General Osteopathic Council, the General Teaching Council for Scotland, the Health Professions Council, the Nursing and Midwifery Council, the Pharmaceutical Society of Great Britain, the Scottish Commission for the Regulation of Care and the Scottish Social Services Council. The NHS Tribunal also has the power to make referrals to Disclosure Scotland on the same basis as the regulatory bodies.\(^75\)

**Relevant inquiry report***
A relevant inquiry is an inquiry held by the Scottish Ministers, the Scottish Parliament or an inquiry held under the Inquiries Act 2005. Where a relevant inquiry results in criticism of the actions of any individual who is undertaking regulated work, that information may be referred to Disclosure Scotland by the organisation making the report and, if appropriate, the individual may be considered for listing on one or both Lists.

**Responsible Person**
A person who is responsible for a child, used in the context of unsupervised contact with children. This term is defined at paragraph 1A of schedule 2 and explained in section 2.4.

**Scheme Membership Statement***
The Scheme Membership Statement\(^76\) is a disclosure record that shows that a named individual is a member of the PVG Scheme and the workforce(s) to which the membership relates. It also shows whether or not they are under consideration for listing for that workforce.

**Scheme Record***
The Scheme Record\(^77\) is a disclosure record which contains a scheme membership statement and any vetting information that is held about a scheme member. In response to a disclosure request, the content of the scheme record can be disclosed

---

\(^{75}\) The Protection of Vulnerable Groups (Scotland) Act 2007 (Power to Refer) (Information Relevant to Listing Decisions) Order 2010 (SSI 2010/178).

\(^{76}\) The Scheme Membership Statement is called the statement of scheme membership or disclosure of scheme membership, depending on context, in the PVG Act and defined at sections 46 and 54, respectively.

\(^{77}\) The Scheme Record is called the scheme record disclosure in the PVG Act and defined at section 52.
to scheme members and registered persons employing them in regulated work or acting for anybody employing the individual.

**Scheme Record Update***
The Scheme Record Update\(^78\) is a disclosure record that contains a more limited summary of the information held in an individual’s scheme record. The scheme record update provides the scheme membership statement, the date that the last full scheme record was issued, whether it contained any vetting information, and whether any vetting information has been added to or removed from the scheme record since that date.

**SSI**
Scottish Statuary Instrument.

**SSSC**
The Scottish Social Services Council.

**SWIA**
The Social Work Inspection Agency.

**Unsupervised contact**
Unsupervised contact has a different meaning in the context of regulated work with children and protected adults (see below).

**Unsupervised contact with children**
Unsupervised contact with children is defined at paragraph 1A of schedule 2 of the PVG Act and explained at section 2.3 of this guidance.

**Unsupervised contact with protected adults**
Unsupervised contact with protected adults only has any meaning in the context of work in establishments (care homes and residential establishments or accommodation). Unsupervised contact with protected adults is defined at paragraph 1 of schedule 3 to the PVG Act and explained at sections 2.4 and 2.7 of this guidance.

**SVG Act**
The Safeguarding Vulnerable Groups Act 2006. The SVG Act applies in England and Wales with certain provisions in that Act extending to Northern Ireland, principally for the Independent Safeguarding Authority to make the listing decisions for Northern Ireland. The SVG Act establishes the VBS, the equivalent to the PVG Scheme for England, Wales and Northern Ireland.

\(^78\) The Scheme Record Update is called the short scheme record disclosure in the PVG Act and defined at section 53.
Umbrella body
An umbrella body is a registered body that countersigns disclosure applications for organisations which are not themselves registered bodies.

Unsuitable
An individual who is found to be unsuitable to do regulated work with children and/or adults following consideration for listing will be listed on the corresponding list(s). The corollary is that a barred individual is deemed to be unsuitable to do regulated work. A barred individual must not do regulated work and cannot join the PVG Scheme.

Vetting information*
Vetting information is information held about an individual on their PVG scheme record and comprises:
- convictions held on central records in the UK;
- whether the individual is included in the sex offenders register;
- relevant non-conviction information provided by police forces; and
- prescribed civil orders.

Vetting information is disclosed only on a Scheme Record but its existence and additions or deletions are flagged on the Scheme Record Update, see chapter 1.

The existence of vetting information may trigger a consideration for listing when an individual applies to join the PVG Scheme. New vetting information received about a scheme member as part of ongoing monitoring can also trigger a consideration for listing. This is explained in chapter 7.

Vulnerable adult
Vulnerable adult is the SVG Act equivalent to protected adult in respect of the VBS for England, Wales and Northern Ireland. There are significant differences between the definition of vulnerable adult in the SVG Act and the definition of protected adult for the PVG Scheme.

VBS
VBS is the Vetting and Barring Scheme established by the Safeguarding Vulnerable Groups Act 2006 and Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 for England, Wales and Northern Ireland. See section 1.10 of the guidance for more information about cross border matters.

Work*
Work is defined at section 95 of the PVG Act and has a very wide meaning; it means work of any kind. It includes paid or unpaid work and other types of work. See section 2.2 of the guidance for more information about work.
ANNEX A. Regulated Work with Children

(SCHEDULE 2 AS AMENDED)

SCHEDULE 2
(introduced by section 91)

REGULATED WORK WITH CHILDREN

PART 1

PRELIMINARY

Regulated work with children

1 Regulated work with children is work in—
   (a) a position whose normal duties include carrying out an activity mentioned in Part 2,
   (b) a position—
      (i) which is not a position mentioned in sub-paragraph (a),
      (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,
   (c) a position mentioned in Part 4, or
   (d) a position whose normal duties include the day to day supervision or management of an individual doing regulated work with children by virtue of sub-paragraph (a) or (b).

Definitions in relation to unsupervised contact with children

1A In this schedule—
   “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,

79 Paragraph 1(b) modified by article 3 of the Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Children) Order 2010 (SSI 2010/240), hereafter the “Regulated Work with Children Order”.

123
(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 section 2 of the 2001 Act,
(e) any person holding a position mentioned in Part 4, and
(f) any person holding a position in a children’s charity, within the meaning of paragraph 27,
“family relationship” and “personal relationship” have the meanings given in section 95.80

Exceptions relating to children’s employment and work

2 Work which would be regulated work with children by virtue of any of paragraphs 3 to 7 is not, despite those provisions, regulated work with children if—
(a) the activity concerned is carried out in relation to children aged 16 or 17 in the course of the children’s work, or
(b) in the case of the activities referred to in paragraphs 5 and 6, the activity is carried out in relation to children under the age of 16 in the course of the children’s employment.

Application of sections 35 and 36 to host parenting

2A Work which—
(a) consists of being a host parent (see paragraph 11A), but
(b) does not include carrying out any other activity mentioned in Part 2 otherwise than in connection with being a host parent,

is not regulated work with children for the purposes of sections 35 and 36.81

PART 2

ACTIVITIES

Caring for children

3 Caring for children (except caring for children which is merely incidental to caring for individuals who are not children).

Teaching, instructing, training or supervising children

4 Teaching, instructing, training or supervising children (except teaching, instructing, or training children which is merely incidental to teaching, instructing, or training individuals who are not children).

---

80 Paragraph 1A inserted by article 4 of the Regulated Work with Children Order.
81 Paragraph 2A inserted by article 5 of the Regulated Work with Children Order.
**Being in sole charge of children**

5 Being in sole charge of children.

**Unsupervised contact with children**

6 Unsupervised contact with children under arrangements made by a responsible person. 82

**Providing advice or guidance to children**

7 Providing advice or guidance to a child or to particular children which relates to physical or emotional well-being, education or training (except providing advice or guidance to a child or to particular children which is merely incidental to providing advice or guidance to individuals who are not children).

**Moderating certain interactive communication services**

8 Moderating a public electronic interactive communication service which is intended for use wholly or mainly by children.

A person moderates such a service if, for the purpose of protecting children, the person has any function relating to—

(a) monitoring the content of matter which forms any part of the service,

(b) removing matter from, or preventing the addition of matter to, the service, or

(c) controlling access to, or use of, the service.

But a person only moderates such a service as mentioned in sub-paragraph (b) or (c) if the person has—

(i) access to the content of the matter, or

(ii) contact with users of the service.

**Provision of care home services**

9 Providing, or working for an organisation which provides, a care home service which is provided exclusively or mainly for children (but only if doing anything permitted or required in connection with the position gives the holder of the position the opportunity to have contact with children).

“Care home service” has the same meaning as in the 2001 Act.

**Provision of independent health care services**

10 Providing, or working for an organisation which provides, an independent health care service which is provided exclusively or mainly for children (but only if doing anything permitted or required in connection with the position gives the holder of the position the opportunity to have contact with children).

---

82 Paragraph 6 substituted by article 6 of the Regulated Work with Children Order. (The effect of paragraph 6 is preserved when read with paragraph 1(b).)
required in connection with the position gives the holder of the position the opportunity to have contact with children).

“Independent health care service” has the same meaning as in the 2001 Act.

Work on day care premises

11 Work on any part of day care premises at times when children are being looked after in that part.

“Day care premises” means premises at which day care of children, within the meaning of section 2 of the 2001 Act, is provided.

Being a host parent

11A Being a host parent.

A “host parent” is a person—

(a) who provides overnight accommodation for, or otherwise looks after, a child (as if the child were part of that person’s family) in connection with an organised activity in which the child is participating, but

(b) who is not responsible for looking after the child when the child is participating in that activity.83

PART 3

ESTABLISHMENTS

Children’s detention institution

12 An institution which is exclusively or mainly for the detention of children.

“Detention” means detention by virtue of an order of a court or under an enactment.

Children’s hospital

13 A hospital which is exclusively or mainly for the reception and treatment of children.

“Hospital” has the meaning given by section 108(1) (interpretation) of the National Health Service (Scotland) Act 1978 (c. 29).

Educational institutions etc.

14 A school.

15 A further education institution.

83 Paragraph 11A inserted by article 7 of the Regulated Work with Children Order.
“Further education institution” means a body listed under the heading “Institutions formerly eligible for funding by the Scottish Further Education Funding Council” in schedule 2 to the Further and Higher Education (Scotland) Act 2005 (asp 6).

Ministers may by order amend the definition of “further education institution” so as to include or exclude bodies listed in that schedule.

16 A hostel used mainly by pupils attending a school or institution mentioned in paragraph 14 or 15 respectively.

Children’s home

17 A home which is exclusively or mainly for children and is provided by a council under—

(a) section 59 (provision by councils of residential and other establishments) of the Social Work (Scotland) Act 1968 (c. 49), or

(b) section 25 (provision of care and support services by local authority) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

PART 4

POSITIONS

Manager of educational institutions etc.

18 Manager, or member of a governing body, body of trustees or other body responsible for the management, of a school, further education institution or hostel mentioned in paragraphs 14 to 16 (but not a member of a council).

Member of council committee

19 Member of—

(a) a committee (including joint committee) of a council which is concerned with the provision of education, accommodation, social services or health care services to children,

(b) a sub-committee which discharges any functions of any such committee.

Member of children’s panel etc.

20 Member of—

(a) a children’s panel established by section 39(1) of the Children (Scotland) Act 1995(c.36),

(b) a Children’s Panel Advisory Committee,

(c) a joint advisory committee established under paragraph 8(1) of Schedule 1 to that Act,
(d) a sub-committee which discharges any functions of any committee mentioned in sub-
paragraph (b) or (c).

Chief social work officer

21 Chief social work officer of a council.

Chief education officer

22 Chief education officer (however called) of a council.

Commissioner for Children and Young People in Scotland

23 Commissioner for Children and Young People in Scotland.

24 Member of that Commissioner’s staff.

Registrar of Independent Schools in Scotland

25 Registrar of Independent Schools in Scotland.

Fostering

26 Foster carer.

Charity trustee

27 Charity trustee of a children’s charity.

“Children’s charity” means a charity whose—
(a) main purpose is to provide benefits for children, and
(b) principal means of delivery of those benefits is by its workers doing regulated work
with children.

An individual works for a charity if the individual works under any arrangements made
by the charity.84

PART 5

GENERAL

Power to amend schedule

28 Ministers may by order modify this schedule as they think appropriate.

29 An order under paragraph 28 may disapply or otherwise modify the application of
sections 34 to 37 in relation to particular kinds of regulated work with children.

84 Paragraph 27 substituted by article 8 of the Regulated Work with Children Order.
ANNEX B. Regulated Work with Adults

(SCHEDULE 3 AS AMENDED)

SCHEDULE 3
(introduced by section 91)

REGULATED WORK WITH ADULTS

PART 1

PRELIMINARY

Regulated work with adults

1 Regulated work with adults is work in—
   (a) a position whose normal duties include carrying out an activity mentioned in Part 2,
   (b) a position—
      (i) which is not a position mentioned in sub-paragraph (a),
      (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,\(^{85}\)
   (c) a position mentioned in Part 4, or
   (d) a position whose normal duties include the day to day supervision or management of an individual doing regulated work with adults by virtue of sub-paragraph (a) or (b).

“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.\(^{86}\)

PART 2

ACTIVITIES

Caring for adults

2 Caring for protected adults (except caring for protected adults under the age of 18 which is merely incidental to caring for children generally).

\(^{85}\) Paragraph 1(b) modified by article 3 of the Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Adults) Order 2010 (SSI 2010/245), hereafter the “Regulated Work with Adults Order”.

\(^{86}\) Inserted by article 3 of the Regulated Work with Adults Order.
Teaching, instructing, training and supervising adults

3 Teaching, instructing, training or supervising protected adults (except teaching, instructing, training or supervising protected adults which is merely incidental to teaching, instructing, training or supervising individuals who are not protected adults).

Being in sole charge of adults

4 Being in sole charge of protected adults (except being in sole charge of protected adults which is merely incidental to being in sole charge of individuals who are not protected adults).

Providing assistance, advice or guidance to adults

5 Providing assistance, advice or guidance to a protected adult or particular protected adults which relates to physical or emotional well-being, education or training (except providing assistance, advice or guidance to a protected adult or protected adults which is merely incidental to providing assistance, advice or guidance to individuals who are not protected adults).

Provision of care home services

6 [deleted]\(^87\)

Inspecting care services on behalf of the Scottish Commission for the Regulation of Care

7 Inspecting adult care services (including inspecting any premises used for the purposes of providing such services) in pursuance of section 25 of the 2001 Act.

An “adult care service” is—
(a) a support service,
(b) an adult placement service,
(c) a care home service,
(d) a housing support service, or
(e) an independent health care service which provides services of the type prescribed under section 94(1)(b),

not provided mainly or exclusively to children.

“Support service”, “adult placement service”, “care home service”, “housing support service”, and “independent health care service” have the same meanings as in the 2001 Act.

PART 3

ESTABLISHMENTS

Care home

8 A care home.

\(^87\) Omitted by article 4 of the Regulated Work with Adults Order.
“Care home” means accommodation occupied mainly or exclusively by individuals aged 16 or over which is provided by an organisation carrying on a care home service (within the meaning of the 2001 Act).

Residential establishment or accommodation
9 A residential establishment or accommodation occupied exclusively or mainly by individuals aged 16 or over which is provided by, or the provision of which is secured by, a council under—
   (a) the Social Work (Scotland) Act 1968 (c.49), or
   (b) section 25 (provision of care and support services by local authority) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

PART 4
POSITIONS

Member of council committee
10 Member of a committee (including joint committee) of a council which is concerned with the provision of education, accommodation, social services or health care services to protected adults.

Any reference to a committee includes a reference to any sub-committee which discharges any functions of that committee.

Chief social work officer
11 Chief social work officer of a council.

Charity trustee
12 Charity trustee of a charity whose—
   (a) main purpose is to provide benefits for protected adults, and
   (b) principal means of delivery of those benefits is by its workers doing regulated work with adults.

An individual works for a charity if the individual works under any arrangements made by the charity.88

PART 5
GENERAL

Power to amend schedule
13 Ministers may by order modify this schedule as they think appropriate.
14 An order under paragraph 13 may disapply or otherwise modify the application of sections 34 to 37 in relation to particular kinds of regulated work with adults.

88 Paragraph 12 substituted by article 5 of the Regulated Work with Adults Order.