

28 February 2011

Our Ref:

Dear

**Protection of Vulnerable Groups (Scotland) Act 2007 (“the PVG Act”)
Code of Practice and Compliance Matters**

Introduction

As you know, the Protecting Vulnerable Groups Scheme (“the PVG Scheme”) goes live on 28 February 2011 and from this date Enhanced Disclosures for individuals working with vulnerable groups will no longer be available. Any applications received on and after this date for such positions must be submitted on the new ‘Application to Join PVG Scheme’ form. To assist with the introduction and use of the PVG Scheme, I am highlighting some specific areas which you may find useful to ensure that your organisation is compliant with the requirements of the PVG Act, the Code of Practice and the law.

Code of Practice

The current Code of Practice and its Explanatory Guide are being replaced by a Code of Practice only. The new Code of Practice (which will come into force on 28 February 2011) has been re-drafted to cover to the PVG Act. It is important to note that criminal record checks under Part V of the Police Act 1997 (“the 1997 Act”) remain for work undertaken by individuals which does not fall within the definition of ‘Regulated Work’. The 1997 Act also continues to provide the basis for an application to be a registered person for both PVG Scheme and 1997 Act purposes. A draft version of the new Code is now available on the Disclosure Scotland website at: www.disclosurescotland.co.uk.

PVG Disclosure Records

To ensure that registered bodies comply with the Code of Practice, can I emphasise that to be able to obtain a PVG disclosure record, the applicant must be in, or intend to be in, regulated work with children and/or regulated work with protected adults. The definition of regulated work is contained within Schedules 2 and 3 of the PVG Act (as amended) which are available on the Disclosure Scotland website.

Of note is that regulated work is defined by reference to:

- (a) the activities that a person does
- (b) the establishments they work in
- (c) the position that they hold.

In addition, the meaning of regulated work includes people whose normal duties include the day to day supervision or management of individuals doing regulated work by virtue of (a) or (b) above.

It is important that registered bodies are aware that the new definitions of regulated work with children and protected adults come into force on the date the PVG Scheme goes live. This means that organisations must have a full understanding of the legislation to ensure that they do not submit inappropriate applications for PVG Scheme membership. An inappropriate application may result in the application being terminated and continued submission of inappropriate applications will result in the registered body being suspended.

Registration

As your organisation is already registered with Disclosure Scotland prior to the go-live date then, as previously communicated to you, you do not need to re-register and may submit PVG applications from 28 February. Disclosure Scotland will advise you of the annual subscription fee requirements for the PVG Act six weeks prior to the anniversary date of your initial registration.

Please note that your registration will allow you to apply for:

- a PVG disclosure record for regulated work as defined within the PVG Act;
- an Enhanced Disclosure for positions, which fall outwith the definition of regulated work but which are for a prescribed purpose as per the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 (“the Criminal Records Regulations”);
- a Standard Disclosure for positions which are exempt from the Rehabilitation of Offenders Act 1974 (“the 1974 Act”) and contained within the Rehabilitation of Offenders Act 1974 (Exclusions & Exceptions) (Scotland) Order 2003 (as amended) (“the 2003 Order”).

Registered bodies can only submit applications at the appropriate level as defined in the law. It is an offence to knowingly submit an application at a level to which you are not lawfully entitled.

Organisations which find that they no longer have positions which fall into regulated work under the PVG Act, or are not prescribed under the Criminal Records Regulations or are not exempt from the 1974 Act and contained in the 2003 Order should contact Disclosure Scotland at: dscompliance@disclosurescotland.gsi.gov.uk to have their organisation de-registered.

Contracts for Services

For registered bodies which require to prepare tender documentation to contract out the provision of services, please note that any requirement to register with Disclosure Scotland, or to require members of the contractors’ staff to have a PVG or Standard or Enhanced Disclosure as a pre-requisite in the tender submission, is inappropriate as this cannot be achieved by the tendering organisations. Disclosure Scotland has had numerous complaints from tendering organisations in this regard.

Registered bodies should note, as highlighted above under ‘Registration’, that only organisations which offer regulated work and/or Part V positions can register with Disclosure Scotland. A tendering organisation cannot register with Disclosure Scotland as part of a tender process. Again, I would highlight that it is an offence for any organisation to knowingly submit inappropriate applications to Disclosure Scotland. Please do not make the requirement to either register or to have contractors’ staff disclosed as part of your tendering process.

When an organisation is successful at tender and awarded a contract, the contracted organisation will determine the appropriate level of disclosure required and not the contracting organisation. In those cases where the contract is for transporting children or protected adults to or from schools or other educational establishments, or hospitals or independent hospitals, clinics or agencies, and where the commissioning organisation is a council, a school, educational establishment or health body (including private and independent health providers), then the commissioner of the transport service can ask for

sight of the disclosure records of staff of the contracted organisation who will be delivering the service. The members of staff must give their consent to their disclosure record being shared on an individual basis. There is more information about this arrangement at Chapter 5 of the PVG Guidance (see 5.2 on page 76) and in Scottish Statutory Instrument 2010/194.

Hire of Premises

The hire of premises does not fall within regulated work, even if the hall is being hired for a purpose which involves an activity with children and/or protected adults. It cannot therefore be made a condition of any let of premises that the hirer must undergo a PVG Scheme disclosure as this would be an inappropriate application. Further, the letting organisation cannot ask the hirer or potential hirer of the premises to show any existing PVG Scheme Record as this is a specific offence under section 67 of the PVG Act. Please see page 79 of the PVG Guidance available on the Disclosure Scotland website.

Suspension of Service

In cases where Disclosure Scotland considers that a registered body or one of its countersignatories has submitted an inappropriate application or has failed to comply with the Code of Practice, Disclosure Scotland may refuse to issue Disclosures in respect of the applications countersigned by that body or person. This also applies to a body or person on whose behalf the application was countersigned who has submitted an inappropriate application or failed to comply with the Code.

Before suspending a person's ability to countersign disclosure applications, Disclosure Scotland will, after investigation, send written notice of their intention to do so giving the reasons for the suspension. If the suspension is that of a registered body, the information will also advise that the organisation will still be able to obtain Disclosure checks through an umbrella body thereby ensuring the continuous processing of appropriate applications.

The registered body or person may make representations in writing to Scottish Ministers as to why their registration should not be suspended.

A registered body that has no lead signatory in place at any time or does not pay the annual subscription within 14 days of Scottish Ministers requiring payment will be suspended.

Disclosure Scotland will, at the request of the suspended person or body, consider whether to lift the suspension, but will not do so until it is satisfied that the person or body in question will thereafter fully comply with the Code.

If you have any queries on any of the above information please contact Disclosure Scotland at: dscompliance@disclosurescotland.gsi.gov.uk.

Yours sincerely



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