

## **PROTECTING VULNERABLE GROUPS (PVG) SCHEME POLICY**

### **INTRODUCTION**

The Protecting Vulnerable Groups Scheme (PVG Scheme) was established by the Protection of Vulnerable Groups (Scotland) Act 2007 (PVG Act) and came into effect on 28 February 2011. The PVG Scheme replaced Enhanced Disclosure checks for those who work with vulnerable groups (children and protected adults) and is managed and delivered by Disclosure Scotland.

It is an offence for Tayside Contracts to offer regulated work to someone who is barred from that work or to fail to remove a person from regulated work if Tayside Contracts has been notified that they are barred. The means of ensuring that someone is not barred from regulated work is to ensure that the individual is a PVG Scheme member.

It is also 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.

The PVG Act replaced the Disqualified from Working with Children List (DWCL) with the PVG children's list and introduced a list of those unsuitable to do regulated work with adults, the PVG adult's list.

Tayside Contracts will meet all costs associated with PVG Scheme membership for all employees.

### **REGULATED WORK**

The PVG Act introduced the concept of 'regulated work'. There are two types of regulated work, which are regulated work with children and regulated work with adults. Regulated work with children supersedes the definition of a childcare position in the Protection of Children (Scotland) Act 2003 (POCSA) and regulated work with adults supersedes contact with an adult at risk.

A child is defined as anyone under 18 years of age and a protected adult is anyone over the age of 16 who is provided with and receives a type of care, support or welfare service.

The PVG Act defines regulated work by reference to the activities that the person does, the position that they hold or the people for whom they are responsible. Examples of regulated work can be found in Appendix A.

All Facilities employees based in a school or other childcare facility are doing regulated work with children as any work within these establishments, where there is the opportunity for unsupervised contact with children when carrying out normal duties, is considered as regulated work with children.

Any Cleaner employed to work in a care home or other residential establishment that is provided by a council under social work or mental health legislation will be doing regulated work with protected adults as any work within these establishments, where there is the opportunity for unsupervised contact with protected adults when carrying out normal duties, is considered regulated work with protected adults.

The line managers of the employees in these particular establishments will also be considered to be doing regulated work.

## **PVG SCHEME MEMBERSHIP**

Any individual who is asked to do or does regulated work with children or protected adults should have membership of the PVG Scheme. PVG Scheme membership is in respect of the type of regulated work being carried out. If an employee works with both children and protected adults they can join the Scheme in respect of both groups. If an employee is a Scheme member for one client group and then applies to begin work with the other they will need to apply for Scheme membership for the second group.

Once an individual is a Scheme member Disclosure Scotland will keep the membership and vetting information for that individual up to date. Any new vetting information that comes to light about a Scheme member will be assessed and if the information suggests that individual has become unsuitable for work with children or protected adults then they will be placed under consideration for listing. If a Scheme member is placed under consideration for listing or is barred from regulated work then Tayside Contracts and the individual will be informed.

It is an offence under the PVG Act to ask someone to apply to join the PVG Scheme or make a disclosure application in relation to work which is not regulated work. This means that an individual cannot be asked to join the PVG Scheme because it would be convenient to have them available for cover. Individuals can only be asked to join the scheme if there is a requirement for them to undertake regulated work.

Tayside Contracts may refuse to recruit or continue to employ an individual in regulated work if that individual refuses to consent to PVG Scheme membership without reasonable grounds for doing so.

## **APPLICANTS TO TAYSIDE CONTRACTS**

Any individual who is applying to Tayside Contracts to carry out regulated work will be required to have membership of the PVG Scheme. Any offer of employment will be subject to satisfactory PVG and reference checks. If an applicant is already a Scheme member then Tayside Contracts will request a Scheme Update from Disclosure Scotland.

When an application for Scheme membership is made Disclosure Scotland will create a unique record of Scheme membership and search for vetting information from a number of sources.

If there is no vetting information the applicant will be given Scheme membership and a copy of the Scheme Record will be sent to the applicant and to Tayside Contracts at the same time.

If there is vetting information, which will include unspent convictions and cautions and certain spent convictions, this will be added to their record. If the vetting information has no bearing on their suitability for regulated work then they will become a Scheme member. If the vetting information does have a bearing on the applicant's suitability for regulated work then the Protection Unit at Disclosure Scotland will assess the information to determine whether or not to consider the applicant for listing.

If the applicant is being considered for listing then they will become a Scheme member while the consideration takes place. The Scheme Record will state that the applicant is being considered for listing.

If there is vetting information on an applicant's Scheme Record that does not disclose any spent conviction information then the Scheme Record will be sent to the applicant and to Tayside Contracts as the same time. If the vetting information does contain information about certain spent convictions

then the applicant will be sent a copy of the Scheme Record, but Disclosure Scotland will withhold Tayside Contracts' copy for a period of ten working days. Under the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2015 the applicant has a right to apply to a Sheriff to have the spent conviction information removed, provided that the conviction is on the list of 'offences which are to be disclosed subject to rules' and the conviction is not relevant to the role that requires PVG Scheme membership.

If the applicant does not wish to appeal to have spent conviction information removed Tayside Contracts will be issued their copy of the Scheme Record no sooner than eleven working days after the date of issue of the applicants Scheme Record. The Scheme Record can be issued to Tayside Contracts earlier if the applicant contacts Disclosure Scotland to notify them that they are happy for the record to be issued.

If the applicant does wish to appeal to a Sheriff they must inform Disclosure Scotland within 10 working days of receipt of their Scheme Record and submit their appeal within three months. Once the applicant has informed Disclosure Scotland of their intention to appeal (and provided they do not withdraw that notice of intention within the original 10 day period) Disclosure Scotland cannot issue a copy of the Scheme Record to Tayside Contracts until the Sheriff has made a decision. Once the Sheriff has made a decision a copy of the Scheme Record will be issued to the applicant and to Tayside Contracts.

If the applicant notifies Disclosure Scotland of their intention to appeal to a Sheriff, but does not do so within the three month period (and does not withdraw their notice of intention to appeal within the original ten day period) then Disclosure Scotland will consider the application for Scheme membership to be closed and will not send a copy of the Scheme Record to Tayside Contracts. The only way for Tayside Contracts to receive a Scheme Record at this point is if a further application form is completed and fee submitted. Unless there are exceptional circumstances the applicant to Tayside Contracts will be required to meet this fee.

Once in receipt of an applicant's Scheme Record Tayside Contracts will review the record and, if there is any vetting information included, a decision about whether or not to withdraw the offer of employment. This decision will be based on several factors, including; the nature of the information/offence, when it was committed and the references that have been received for the applicant.

## **SAFE RECRUITMENT PRACTICE**

The fact that an individual is a PVG Scheme member and is therefore not considered as unsuitable for regulated work with either children or protected adults does not necessarily mean that the individual is suitable to work in a specific position. That decision must always be made through good recruitment and employment practice (e.g. reference and skills and qualification checking) and informed through the Scheme Record.

## **RECRUITMENT OF EX-OFFENDERS**

Having a criminal record will not necessarily prevent an individual from working for Tayside Contracts. This will depend on the nature of the position and the circumstances and background of the offence(s). Tayside Contracts undertake to treat all applicants fairly and not to discriminate unfairly on the basis of information revealed in a PVG Scheme Record.

## **SCHEME MEMBERS**

Disclosure Scotland will keep the membership and vetting information for all PVG Scheme members up to date. Any new vetting information that comes to light about a Scheme member will be assessed and if the information suggests that individual has become unsuitable for work with children or protected adults then they will be placed under consideration for listing and Tayside Contracts and the individual will be informed.

If this occurs a meeting will be held with the employee to discuss the case. In some circumstances it may be appropriate for the employee to be suspended from work, or removed from regulated work, until the decision on listing is made. Should the employee be listed (barred from regulated work) Tayside Contracts will be obliged to remove the employee from regulated work. The matter would also be investigated and dealt with in accordance with Tayside Contracts' Disciplinary Policy.

Any individual applying for or carrying out regulated work when barred, or listed, is committing an offence. If Tayside Contracts is informed that an employee has been listed the employee will be removed from regulated work immediately and the matter will be investigated and dealt with as above.

## **SCHEME MEMBER OBLIGATIONS**

Individual Scheme members must keep their personal information up to date with Disclosure Scotland and they should inform Disclosure Scotland if they cease to carry out regulated work for, or leave, Tayside Contracts.

Scheme members must inform Disclosure Scotland within three months of any change to their name or gender (as indicated by the issue of a full gender recognition certificate). Failure to do so, without reasonable excuse, is an offence.

## **MAKING A REFERRAL TO DISCLOSURE SCOTLAND**

An individual may become unsuitable to continue to do regulated work, which can be indicated by their conduct at work or outside of work. If this is the case then information must be provided to Disclosure Scotland for evaluation and appropriate action to be taken. The process for providing such information to Disclosure Scotland is called 'making a referral'.

The PVG Act places a legal duty on Tayside Contracts to refer an individual to Scottish Ministers if an employee is dismissed, or permanently moved away, from regulated work, provided specific criteria are met. Full details can be found on Disclosure Scotland's website.

## **HANDLING, USE, STORAGE, RETENTION AND DESTRUCTION OF INFORMATION**

Tayside Contracts will use PVG or Disclosure information only for the purposes for which it was obtained, i.e. to determine suitability to carry out regulated work.

Tayside Contracts complies with the Revised Code of Practice for Disclosure and Barring Service Registered persons, published by Scottish Ministers under section 122 of The Police Act 1997, the Protection of Vulnerable Groups (Scotland) Act 2007 and the Data Protection Act 1998, regarding the handling, holding, storage, destruction and retention of disclosure information provided by Disclosure Scotland.

PVG or Disclosure information will be stored securely in a lockable, non-portable storage container. Access will be strictly limited to authorised named individuals who are entitled to see it in the course of their duties. PVG or Disclosure information will not be shared with anyone else, unless it is necessary in order to determine a person's suitability for regulated work. Tayside Contracts will not share disclosure information with a third party unless the subject has given their written consent and has been made aware of the purpose of the sharing.

PVG/Disclosure information will not be kept for longer than 90 days, to allow for the consideration and resolution of any disputes or complaints. No paper or electronic image of the disclosure information will be retained. However, details of the checks (the date it was made, reference number etc.) will be retained in the individual's HR record.

Tayside Contracts will ensure that disclosure information is destroyed in a secure manner, i.e. by shredding or burning. Any disclosure information that is awaiting destruction will be stored in a secure location.

Tayside Contracts will notify Disclosure Scotland of any employee who ceases to carry out regulated work (i.e. changes post or leaves employment). While this individual will continue to be a PVG Scheme member, Tayside Contracts will no longer be considered an interested party and Disclosure Scotland will provide no further updates or vetting information to Tayside Contracts regarding that individual.

## **OTHER TYPES OF CHECKS**

Disclosure Scotland continues to process other types of disclosure check (basic and standard), that are not for the purposes of work with children or protected adults. Tayside Contracts may require applicants for certain posts, e.g. Cleaners based at Dundee Airport, to obtain a successful basic or standard disclosure certificate.

## **RELATED POLICIES**

The Protecting Vulnerable Groups (PVG) Scheme Policy links to the following policies which can be accessed on the Intranet, or requested from your line manager or from the HR Admin Team:

- Disciplinary Policy
- Recruitment and Selection Policy
- Information Security Policy

The above list is not exhaustive.

## **POLICY REVIEW**

The Protecting Vulnerable Groups (PVG) Scheme Policy will be reviewed at three yearly intervals, or as required by legislative changes.

## **GENERAL DATA PROTECTION REGULATION**

Tayside Contracts respects the privacy of our employees, any personal data processed during the application of this policy will be in line with Data Protection Legislation. Further information on how we may process personal data for the purpose of applying this policy can be found in our Privacy Notice.

Should you have any queries or require further clarification regarding any aspects of this policy or related policies please contact, HR Services on 01382 812721 or [employment.policies@tayside-contracts.co.uk](mailto:employment.policies@tayside-contracts.co.uk)

If you would like this document translated into another language or in another format such as audio or large print then please contact Angie Thompson, Equalities and Communications Manager on 01382 834165 or [angie.thompson@tayside-contracts.co.uk](mailto:angie.thompson@tayside-contracts.co.uk)

**Appendix A - Regulated Work**

**Children**

A child is an individual under 18 years of age.

<p>A position whose normal duties include carrying out an activity listed opposite</p>	<ul style="list-style-type: none"> <li>• Caring for children *</li> <li>• Teaching, instructing, training or supervising children*</li> <li>• Being in sole charge of children</li> <li>• Providing advice or guidance to a child which relates to physical or emotional wellbeing, education or training*</li> <li>• Work on any part of day care premises at times when children are being looked after in that part</li> <li>• Providing, or working for an organisation which provides a care home service or independent health care exclusively or mainly for children (but only if that gives the post holder the opportunity to have contact with children)</li> <li>• Moderating an interactive communication service intended for use wholly or mainly for children, but only where that person has access to content and users</li> <li>• Contact with children under an arrangement made by a parent or professional carer (e.g. childminder) where the parent, a professional carer or family member isn't present</li> <li>• being a host parent, which is someone who provides overnight accommodation for, or otherwise looks after, a child as if the child were part of the person's family in connection with an organised activity in which the child is participating but who is not responsible for looking after the child when the child is participating in that activity</li> </ul>
<p>A position whose normal duties include work in an establishment listed opposite AND which gives the post holder when doing anything permitted or required in connection with the position, the opportunity to have unsupervised contact with children</p> <p>“Unsupervised contact” is also defined as meaning contact in the absence of a responsible person (usually parent), or a person whose role is caring for, teaching etc, supervising or being in sole care of children. The effect of this is to make it clear that some people who may go into a school or</p>	<ul style="list-style-type: none"> <li>• A school</li> <li>• Children's homes (residential units)</li> <li>• A hostel used by school pupils</li> <li>• Further education institution</li> <li>• Children's detention institution</li> <li>• Children's hospital</li> </ul>

care establishment and who do not have unsupervised contact are not to be treated as doing regulated work e.g. joiners, plumbers, but also for example people who go into a school in the evening for a meeting.	
A position listed opposite	<ul style="list-style-type: none"> <li>• Manager of a school (not a member of a council though)</li> <li>• Member of Council Committee/Sub-Committee concerned in the provision of education, accommodation, social services to children</li> <li>• Chief Social Work Officer</li> <li>• Chief Education Officer of a Council</li> <li>• Foster Carer</li> <li>• Member of Children’s Panel</li> <li>• Member of Children’s Panel Advisory Committee</li> </ul>
A position whose normal duties include day to day supervision or management of a person doing regulated work which falls into row 1 or 2 above.	

\*Except where activity is merely incidental to carrying out that activity for adults

### **Adults**

A protected adult is an individual over the age of 16 provided with and in receipt of a type of care, support or welfare service. There are four categories of service (registered care services, health services, community care services and welfare services) receipt of any one of these makes an individual a protected adult.

A position whose normal duties include carrying out an activity listed opposite	<ul style="list-style-type: none"> <li>• Caring for protected adults (except where protected adults are under 18 and only incidental to caring for children generally)</li> <li>• Teaching, instructing, training or supervising protected adults (except where only incidental to doing those activities for non-protected adults)</li> <li>• Being in sole charge of protected adults (except where only incidental to being in sole charge of non-protected adults)</li> <li>• Providing assistance, advice or guidance to a protected adult which relates to <ul style="list-style-type: none"> <li>○ Physical or emotional well being</li> <li>○ Education</li> <li>○ Training</li> </ul> (except where only incidental to providing those activities to non-protected adults) </li> </ul>
A position <ul style="list-style-type: none"> <li>• whose normal duties include work in one of the establishments opposite</li> <li>• which gives the holder of the position the</li> </ul>	<ul style="list-style-type: none"> <li>• a care home</li> <li>• a residential establishment under the Social Work (Scotland) Act or Mental Health Act</li> </ul>



<p>opportunity to have unsupervised contact with protected adults (which is contact in the absence of someone doing regulated work)</p> <ul style="list-style-type: none"> <li>• where contact with protected adults is more than incidental</li> </ul>	
<p>A position listed opposite</p>	<ul style="list-style-type: none"> <li>• Member of Council Committee/Sub-Committee concerned in the provision of education, accommodation, social services to protected adults</li> <li>• Chief Social Work Officer</li> </ul>
<p>A position whose normal duties include day to day supervision or management of a person doing regulated work with adults which falls into row 1 or 2 above.</p>	