

PVG AND THE DUTY TO REFER

Protection of Vulnerable Groups (Scotland) Act 2007

The Protection of Vulnerable Groups (Scotland) Act 2007 (the Act) provides for a scheme whereby individuals with a known history of harm can be prevented from doing work with children and/or protected adults. Disclosure Scotland is responsible for the administration of this scheme on behalf of Scottish Ministers and makes decisions on whether individuals are unsuitable to become scheme members. It is the duty of Scottish Ministers to keep and maintain lists of those barred from working with children or protected adults.

Protection Services

In Protection Services, we act on information provided to us from the following sources:

- Criminal History (vetting information) from police systems,
- Court referrals,
- Referrals made by employers,
- Referrals made by regulated work providers,
- Referrals made by professional regulatory bodies, and
- Non-conviction information disclosed by a Chief Constable

We carry out a 2 stage process; first we initially identify those whose past conduct suggests that they may be unsuitable to become scheme members. We make this decision using a defensible and structured evaluative approach. This process identifies those individuals who require formal consideration for listing, a status that provides Disclosure Scotland with extensive powers to retrieve information. We seek this further information about the individual and their conduct and, again using a defensible structured decision approach, decide whether the individual is unsuitable to become a scheme member. All of the information relied upon by Scottish Ministers must be shared with the individual and opportunity given for them to make representations. Scottish Ministers must have regard to the representations. There is a robust decision-making process and decisions are always subjected to a high level of scrutiny before finalisation.

We developed the structured decision-making process in consultation with forensic psychologists, a stakeholder group which included representation from local authority social work services, evaluation of academic papers and research. The process has been the subject of a very positive follow-up review investigating the extent to which real-world decision practice is consistent with the policies and procedures.

Referrals to Disclosure Scotland

The Act places duties on organisations to refer individuals to Disclosure Scotland when certain prescribed conditions are met. It also provides organisations with powers to refer individuals not otherwise covered by the duty to refer.

Making a Referral

Under the Act, organisations and personnel suppliers have a duty to make a referral (within three months of taking a final decision to dismiss an individual or move them permanently from regulated work) to Disclosure Scotland when they are satisfied that an individual's conduct meets the following criteria (referral ground):

- 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

Organisations may only make a referral when they have dismissed an individual or moved them permanently from regulated work with the group concerned or where they would or might have dismissed had the individual not left their employment before the decision was made, or had they known the information at the time the individual worked for them.

Duty to refer

Under Section 3 of the Act organisations have a duty to make referrals where the above grounds have been met. Section 9 of the legislation states that failure to refer an individual within 3 months of the date that the duty arose is an offence.

Section 6 of the Act provides that organisations who dismissed (or moved permanently from regulated work with the relevant group) an employee for conduct satisfying a referral ground in section 2 before the legislation came into force on 28 February 2011 can make a referral, but are under no duty to do so.

Prescribed Information

When making a referral to Disclosure Scotland, organisations are required to supply all the relevant information that they hold. We provide a standard referral form which can be found at our website www.disclosurescotland.co.uk. This form provides clear examples of the types of information that are required. It is not mandatory that organisations use this form but it will make the referral process easier for both the organisation and Disclosure Scotland.

Prescribed information is defined by the PVG Act and associated legislation. It can be but is not limited to the following:

- Details of any investigation carried out and the conclusions of that investigation
- Correspondence to/from the individual
- Witness statements
- Care plans
- Investigatory reports
- Records of disciplinary hearings
- Details of any actions taken or decisions made
- Details of any relevant disciplinary policies or practices or conditions of employment
- Details of any regulated work codes of conduct or practice etc
- Details of any involvement by other organisations or agencies (including regulators and law enforcement agencies).
- Details of any associated disciplinary appeal proceedings

Further information

If you need any further information on making a referral, please contact Disclosure Scotland's helpdesk on **0300 0200 040** or info@disclosurescotland.co.uk