

# Shapinsay Development Trust

---

## GUIDANCE ON THE PROTECTION OF VULNERABLE GROUPS SCHEME

### Introduction

This guidance note provides an overview of the provisions of the Protection of Vulnerable Groups (Scotland) Act 2007 as they apply to employers wishing to deliver services to children or protected adults and of the respective obligations on employers to screen staff and, where relevant, volunteers.

The guidance is not intended to provide comprehensive information about all of the provisions of the Act.

We attach the following styles for Employers who will be affected by the PVG Scheme when it goes live:

- **Employee and Volunteer Vetting Policy:** This covers both regulated and unregulated work and replaces our style "Recruitment of Ex-Offenders" policy.
- **Protection of Vulnerable Groups Policy:** This is intended to replace any existing "Protection of Children" and "Protection of Vulnerable Adults" policies.
- **Offer Letter (Conditional upon PVG membership):** This should be distributed to successful candidates who will be employed into "Regulated Work".
- **Contract of Employment Clause ("Regulated Work" positions):** This is a draft clause to be added to contracts of employment for new staff commencing "Regulated Work". Where possible, clients should ask existing staff who undertake "Regulated Work" to sign this clause as an addition to their terms and conditions of employment.
- **Disciplinary Policy (Code of Conduct):** This now lists refusal to join the PVG Scheme when requested as a Gross Misconduct offence.

### ***PVG Scheme: Main Changes***

The Protection of Vulnerable Groups Scheme goes live in February 2011.

The Scheme is managed by Disclosure Scotland, which also continues to deliver the other types of disclosure that are still available. The Protection Unit within Disclosure Scotland receives and considers referrals and takes decisions about who may be listed as unsuitable to work with children or protected adults.

Disclosure Scotland has produced comprehensive guidelines on this subject on their web page: [http://www.disclosurescotland.co.uk/pvg/pvg\\_index.html](http://www.disclosurescotland.co.uk/pvg/pvg_index.html)

The Scheme has been designed to improve on the current system of disclosure checking and will change the following:

- It replaces Enhanced Disclosure procedures for individuals carrying out "Regulated Work" with children or protected adults;
- It is an offence to employ an individual who is barred from carrying out "Regulated Work";
- It is an offence for an individual to carry out or apply for "Regulated Work" when they are barred;
- "Regulated Work" is a defined term;

- Employers wishing to make checks will be subject to a new fee system;
- Individuals receive a Scheme Record which is confidential and can only be shared with the individual's consent;
- Employers are under a duty to refer an individual to Disclosure Scotland in certain circumstances;
- There are two lists that contain details of individuals who are unsuitable to carry out "Regulated Work" 1) children or 2) protected adults.

### ***Who does the Scheme apply to?***

When introduced and for the first year, the Scheme will only apply where Employers are recruiting into "Regulated Work" or where existing staff are moving to new "Regulated Work" positions within the organisation. If an Employer is asking an individual to do "Regulated Work" with protected adults or children for the first time, they should ask the individual to join the PVG Scheme. This will apply for a new member of staff/volunteer or where there is a change in an existing employee's/volunteer's role.

Provisions are being put in place for retrospective checks on existing staff to be carried out, but these will be phased in over 3 to 4 years after February 2011.

Employers should not arrange for PVG checks for any existing staff who are continuing to do the same job, even if they are doing "Regulated Work" and have never had a disclosure check. The only exception to this is where the Employer already operates a disclosure renewal scheme. For example, if an employee carrying out "Regulated Work" is required to provide a new Enhanced Disclosure every year, the next time a renewal is due, the Employer can require that employee to become a member of the PVG Scheme, if it is agreed with Disclosure Scotland that the organisation can join the scheme.

The PVG Scheme is only applicable in Scotland and therefore will only apply to members of staff carrying out "Regulated Work" within Scotland. Employers recruiting members of staff to carry out work outside Scotland will be subject to different rules.

Please note that Disclosure Scotland cannot gather information about people from overseas. For information about this, please consult the Criminal Records Bureau's Overseas Advice web page on [www.scotland.gov.uk](http://www.scotland.gov.uk).

### ***"Regulated Work"***

The concept of "Regulated Work" is central to the operation of the PVG Scheme. Only individuals carrying out "Regulated Work" will need to join the Scheme. Employers should analyse each position within their organisation to determine whether they fall under the category of "Regulated Work". An overview of the meaning of "Regulated Work" is included below, however Employers should consult the Disclosure Scotland guidance for a thorough analysis.

"Regulated Work" will generally cover most work with children or protected adults. A 'protected adult' is an individual aged 16 or over who is in receipt of one or more type of care, health or welfare service. A 'child' is defined as anyone under 18 years old. An individual aged 16 or 17 in receipt of one or more type of care will be protected under both categories.

Where individuals are carrying out "Regulated Work" with both children and protected adults, they will need to be members of the Scheme in relation to both groups.

To decide if an individual is doing “Regulated Work”, employers will need to carry out an assessment of each position within the organisation using the following 5 steps:

- **Is it work (including voluntary work)?** If a service is provided for an individual in the course of a family relationship or a personal relationship for no commercial consideration then it is not considered work.
- **Who is the individual working with?** Children, protected adults or both.
- **Where is the individual working?** Certain workplaces will automatically require membership e.g. care homes, schools and colleges, unless an exception applies.
- **What does the individual do?** Please see guidance in relation to the type of work that would fall under the category of “Regulated Work” attached.
- **Is it within the individual’s normal duties?** Do the duties form part of the individual’s job on an on-going basis and not a one-off occurrence or an unforeseeable event.

### **Are there any exceptions that apply?**

The main exceptions are:

- Where an activity includes a cross-section of society and attendance is discretionary, the fact that a child or protected adult attends, won't make that activity subject to the PVG Scheme. The incidental activity test is unlikely to apply where the ‘incidental’ activity was targeted at children or particular adults, is more likely to be attractive to either group or where attendance is mandatory. An employer must consider the degree to which it could reasonably be foreseen that children or potentially vulnerable adults might attend when deciding if this exception applies;
- Working alongside children aged 16 or 17, who are themselves employed;
- Working with children when they are undertaking a work experience programme;
- Where there is no opportunity for unsupervised contact with a child or protected adult and where any contact would be incidental.

Employers cannot ask someone to apply to join the PVG Scheme or to make a disclosure application under the Scheme for work that does not fall under the category of “Regulated Work”.

### ***Disclosure Checks***

Where positions do not fall within the definition of “Regulated Work”, Basic and Standard disclosure checks will still be available where the employer considers necessary. Basic disclosures will be available for any purpose and Standard disclosures will be available for broadly the same positions as before. Enhanced disclosures may continue to be available for some unregulated work posts.

Where an employer requires an individual to undertake “Regulated Work” with children or protected adults either as a new member of staff or volunteer or due to a change of role, they should ask them to join the PVG Scheme. Individuals will apply to join the Scheme in relation to “Regulated Work” with either children or adults or, where necessary, both.

Where a disclosure check applies only to one vulnerable group, then the Scheme record will not disclose to the employer if the individual is barred from working with the other group. That

information may, however, be included in the vetting information that can be accessed with the individual's consent.

Employers can ask existing staff to join the PVG Scheme where they historically and currently operate a disclosure renewal procedure. The Employer can ask the employee to become a member of the PVG Scheme, rather than producing a new disclosure on the relevant date.

### ***The Scheme Record***

The PVG Scheme discontinues Enhanced Disclosure checks for individuals undertaking "Regulated Work" with children or protected adults and replaces it with new disclosure checks.

The Employer will request a disclosure check for recruitment and retention purposes and cannot use it for any other purpose. It is an offence to pass disclosure records or other related information onto anyone not involved in the recruitment decision.

Disclosure Scotland will issue two types of record when an individual applies for membership of the Scheme:

- A Scheme Record: After the individual's records have been checked, and they are not barred from carrying out "Regulated Work" with the relevant group(s), Disclosure Scotland will issue the Scheme Record. This is issued at the request of the organisation and will be issued to both the organisation and the individual.
- A Scheme Membership Statement: This is issued at the request of the individual and will only be issued to that individual. Once an individual is a member of the PVG Scheme, they will remain a member for life unless they specifically withdraw their membership.

The Scheme Record will show:

- Whether the individual is barred from carrying out the relevant types of "Regulated Work";
- Whether the individual is under consideration for listing for the relevant type(s) of "Regulated Work";
- Whether there is any relevant vetting information including:
  - Convictions and cautions;
  - Registered on the sex offenders register;
  - Relevant non-conviction information;
  - Prescribed civil orders relating to sexual harm.

There is one Record for each individual, ending the need for multiple checks. The Scheme Record is portable, as it relates to "Regulated Work" with either or both vulnerable groups and is not specific to a particular post. Although, where an individual has a Record only for "Regulated Work" for children and the employer wishes them to work with protected adults, then a second check would be required in relation to "Regulated Work" with adults and vice-versa.

If an individual is barred and applies for membership of the Scheme, the individual and the employer will be informed by letter that the person is barred from undertaking that type of "Regulated Work".

### ***Scheme Record updates***

Scheme Record Updates will be available once the individual has become a Scheme member. Scheme Records are continuously updated and Disclosure Scotland continues to collect vetting information so that new information indicating that an individual may be unsuitable can be acted upon. Disclosure Scotland will keep a record of registered bodies with an interest in an individual and notify those bodies if a person is put under consideration for listing or is barred.

The following information will be available on an Update:

- Whether the last Scheme Record contained vetting information;
- Whether any new vetting information has been added, with dates for any additions made;
- Whether any vetting information has been deleted, with dates for any deletions made.

A Record Update will only show that vetting information is available and will not give details of the specific information held. Where there is new vetting information, the employer can request a full Scheme Record to ensure that all relevant information is considered. Employers will need the consent of the individual prior to requesting a full Scheme Record and where consent is withheld, they could take disciplinary action.

### ***Checks for Existing Staff***

Employers should not carry out checks on existing staff when the Scheme is first introduced. Arrangements will need to be made for retrospective checking over the 3 or 4 years following February 2011 - with the eventual result that everyone carrying out "Regulated Work" will be members of the PVG Scheme.

If employers already have disclosure renewal procedures in place, they can continue to operate these but only if they were already in place when the Scheme was introduced.

### ***Ex-Employees***

If a PVG Scheme member leaves the organisation, the Employer should notify Disclosure Scotland. Once an employee has left, the Employer is not entitled to receive PVG Scheme information in relation to that individual.

If an individual informs Disclosure Scotland that they have left their employment, a check will be made to verify that this is the case and that employer will be removed from the relevant Record.

If an Employer receives notification that someone is being considered for listing after they have left their employment, the Employer should immediately return the notification with an explanation of the circumstances. The Employer must not pass the information on to anyone else e.g. the person's current employer, though they can tell Disclosure Scotland about the existence of the new employer.

### ***Accessing Scheme records***

Only registered bodies can access PVG Scheme Records and Updates. Organisations already registered with Disclosure Scotland to access Enhanced Disclosures do not need to renew their registration to access PVG records.

The fee for joining the PVG Scheme is £59 for employees but free for qualifying volunteers. It will be difficult for Employers to justify asking existing employees to pay for their Scheme membership. During the recruitment of new staff, Employers can make paid PVG Scheme membership a condition of employment.

The fee for Scheme Record Updates is £18. The fee to check a record after receiving a Scheme Update is £41. The Employer would normally bear this cost and it is therefore worth asking for an update in the first instance.

### ***Storage and sharing of disclosure information***

Employers must comply with the Data Protection Act 1988 in relation to storage of this data. Records must be stored securely and should not be kept indefinitely. Employers can keep a record of dates when checks were made, disclosure reference numbers and who the checks related to, but must not store other personal information for longer than is necessary to achieve the purpose for which it was collected.

It is an offence to share someone's disclosure check with anyone else, unless it is absolutely necessary in order to make decisions relating to an individual's suitability to carry out "Regulated Work".

Bear in mind that it is an offence for an Employer to ask to see a Scheme Record where they are not employing that individual in "Regulated Work". Therefore, if another organisation asks to see an individual's disclosure record, the employer should not oblige.

### ***The lists***

The Protection of Vulnerable Groups Act creates two lists containing details of individuals who are unsuitable to carry out "Regulated Work" with 1) children and 2) protected adults. A referral to one of the lists can be made by the Employer or the courts or can be prompted as a result of newly available vetting information or a relevant inquiry report.

The new list relating to children replaces the "Disqualified from Working with Children List" (DWLC). Individuals already appearing on the DWLC will automatically appear on the new children's list.

### ***Consideration for listing***

Disclosure Scotland will notify the Employer where someone working for the organisation is under consideration for listing.

Where a person is under consideration for listing, they are still entitled to carry out "Regulated Work". Where a person is considered for listing for one list only, this has no bearing on their ability to work with the other workforce (i.e. on the other list). Employers will need to consider whether it is appropriate to remove an individual who is considered for listing on a temporary basis until the case is resolved. This could be by paid suspension or a temporary move to unregulated work.

The fact that an individual is being considered for listing must be kept confidential.

Where the individual is not subsequently barred, then the temporary move or suspension should usually be discontinued. Disclosure Scotland will provide reasons for their decision, however, the employer could ask the individual for consent to access any new vetting information. Where the new information is relevant, the employer can assess whether it is appropriate to invoke their disciplinary procedures.

We have drafted our style policies with flexibility for the Employer in these circumstances in mind.

## ***Duty to Refer***

The Employer is under a duty to make a referral to Disclosure Scotland if an employee is dismissed or moved into an unregulated work position within the organisation for a reason falling under the referral ground, whether or not they are a PVG Scheme member. Disclosure Scotland will then assess the information provided and decide what action should be taken.

Referrals will also be made if:

- (1) the Company was considering dismissal/moving to unregulated work, and before a decision could be reached, the employee left the organisation;
- (2) the Company discovers information after the employee has left, that would have resulted in a dismissal/move into unregulated work had it been discovered whilst the employee was working.

The referral ground is where an individual has done any 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;
- Given inappropriate medical treatment;

The harmful behaviour need not have been in the workplace or even connected with work. Please note, however, that they will need to have been engaged in the relevant kind of "Regulated Work".

Where the employer makes a referral, they are under no obligation to inform the individual, although it would be polite to do so.

The employer can choose whether or not to make a referral in respect of an individual who would have fallen under the referral ground before the PVG Scheme started.

If the employer is concerned about an individual's behaviour, but cannot refer them to Disclosure Scotland because they are not doing "Regulated Work", they should contact the police.

The Act provides employers with protection from action for damages, provided any referral made to Disclosure Scotland was made in good faith, so the employer cannot be sued if someone loses their job.

## ***Barring***

It is an offence to employ an individual who is barred from undertaking "Regulated Work" or to fail to remove an individual from "Regulated Work" if you are notified that they are barred. The defence is that the employer did not know and could not reasonably be expected to know that the individual was barred.

The way for an Employer to check whether an individual is barred is to see their Scheme Record. Employers should consider making Scheme membership and production of a clean Scheme Record a condition of any offer of employment into "Regulated Work".

## ***Administrative issues***

Employers can register with the Central Registered Body in Scotland (CRBS) or Disclosure Scotland, both of which offer free checks for volunteers, although registration fees may apply.

Employers wishing to register must have robust procedures for handling disclosure records securely. If your organisation is already registered, there is no need to re-register as your records will automatically be moved onto the new systems.

Disclosure Scotland will not issue disclosure records until fees have been paid, unless they have put in place invoicing arrangements with the organisation concerned.

## ***Further information***

The Disclosure Scotland website [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk) includes guidance and training materials and telephone and e mail help desks are also available on 0870 609 6006 or [pvgenquiries@scotland.gsi.gov.uk](mailto:pvgenquiries@scotland.gsi.gov.uk)

The Central Registered Bod in Scotland (CRBS), Jubilee House, Forthside Way, Stirling FK8 1QZ 01786 849777 [www.crbs.org.uk](http://www.crbs.org.uk) provides advice and guidance and delivers relevant training. Phone and e mail help desks are available on 01786 849777 or [pvg@crbs.org.uk](mailto:pvg@crbs.org.uk).

The Scottish Government website [www.scotland.gov.uk/pvglegislation](http://www.scotland.gov.uk/pvglegislation) provides more detail about the Act and associated Code of Practice, [www.infoscotland.com/pvgscheme](http://www.infoscotland.com/pvgscheme) provides useful detailed information about the Act and its implementation.

## ***TYPES OF “REGULATED WORK”***

### ***“Regulated Work” with Adults***

**Health Service:** In relation to adults, “Regulated Work” applies where a service is provided or secured by a public health body (e.g. a Health Board) concerning the treatment, care, support of and provision of advice and assistance to individuals in relation to their health and well-being.

**Welfare Service:** In relation to adults, welfare includes any service which provides support, assistance, advice or counselling to individuals with particular needs, provided that the following conditions are met:

- The service is provided to one or more persons aged 16+, in the course of work;
- The service is delivered on behalf of an organisation;
- Training is required in order to be able to deliver the service;
- There is a frequency and formality to the service;
- And either it requires a contract between the service provider and the recipient or it is personalised to an individual’s needs.

The activities which may attract protection include:

- Being in sole charge;
- Teaching, instructing, training or supervising;
- Providing assistance, advice or guidance in relation to physical or emotional well-being, education or training.



Where an individual's normal duties include the management and supervision of someone doing "Regulated Work" with adults, there **may** be a need for the manager or supervisor to join the PVG scheme.

### ***"Regulated Work" with Children***

In relation to children, "Regulated Work" applies where a person's normal duties involve carrying out particular activities or where they work in a particular establishment or where normal duties include the day to day supervision or management of someone doing "Regulated Work" with children. The activities which **may** mean that the work is regulated are:

- Teaching, instructing, training or supervising children;
- Being in sole charge of children;
- Unsupervised contact with children under arrangements made by a 'responsible' person;
- Providing advice or guidance about the child's emotional or physical well-being, education or training.

The particular establishments in question include schools and higher education institutions, provided the work there is part of normal duties.

The provisions above apply only where a person may have **unsupervised** contact with children.

## **EMPLOYEE AND VOLUNTEER VETTING POLICY**

### **The Policy**

This policy covers the different types of vetting required for the purposes of assessing applicants' or existing employees' suitability for positions within the organisation, licensing and other relevant purposes. This policy also applies to all volunteers, whether they are an existing member of staff or applying for a position.

All applicants for positions will be treated fairly and the Company shall not discriminate unfairly against the subject of vetting on the basis of conviction or other information revealed.

This policy will be made available to all applicants for positions where vetting is appropriate at the outset of the recruitment process and, where appropriate, to existing employees.

The Company is committed to equality of opportunity, to following practices, and to providing a service which is free from unfair and unlawful discrimination. We ensure that no applicant or member of staff is subject to less favourable treatment on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation, responsibilities for dependants, offending background, or is disadvantaged by any condition which cannot be shown to be relevant to performance.

### **The Policy in Operation**

The Company will request vetting information only where this is considered proportionate and relevant to the particular position applied for.

All positions within the business will be analysed to determine whether an applicant or an existing employee will require to be vetted. The Company will consider the relevant legislation which determines what level of vetting is required.

Where vetting is deemed necessary for a post or position, all applicants will be made aware at the initial recruitment stage and where appropriate, existing employees will be made aware, that the position will be subject to either a Disclosure or membership of the Protection of Vulnerable Groups (PVG) Scheme. The Company will require the successful candidate or existing employee to undergo an appropriate check in that respect.

Whether a Disclosure or membership of the PVG Scheme is required will depend on the type of work the successful candidate/existing employee will undertake within the Company: "Regulated Work" or unregulated work.

### **Unregulated work**

Unregulated work is simply any work that does not fall within the category of "Regulated Work" under the Protection of Vulnerable Groups (Scotland) Act 2007.

Where the position applied for falls under the category of unregulated work, the Company will determine whether it is proportionate and relevant to require a Disclosure and at what level.

Where a Disclosure is to form part of the recruitment process, the Company will encourage all applicants selected for interview to provide details of their criminal record at an early stage in the application process. Applicants will normally be requested to complete a criminal records self-declaration form. We ask that this information be sent under separate, confidential cover, to a designated person within the Company and we guarantee that this information will only be seen by those who need to see it as part of the recruitment process.

In line with the Rehabilitation of Offenders Act 1974, the Company will only ask about convictions which are defined as "unspent" in terms of that Act, unless the nature of the position is such that we are entitled to ask questions about an individual's entire criminal record.

At interview, or under separate discussion, we undertake to ensure an open and measured discussion on the subject of any offences or other matters that might be considered relevant for the position concerned. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment. The Company shall also discuss any matter revealed in a Disclosure Certificate (We are only able to discuss what is contained on a Disclosure Certificate and not what may have been sent under separate cover by a police force.) with the subject of that Disclosure before considering withdrawing a conditional offer of employment.

Those employees who are involved in the recruitment process shall be suitably trained to identify and assess the relevance and circumstances of Disclosure information. The Company shall also ensure that they have received appropriate guidance and training in the relevant legislation relating to employment of ex-offenders (e.g. the Rehabilitation of Offenders Act 1974).

The Company complies fully with the Code of Practice, issued by Scottish Ministers, in connection with the use of information provided to registered persons, their nominees and other recipients of information by Disclosure Scotland under Part V of the Police Act 1997. The Company undertakes to make every subject of a Disclosure aware of the existence of the Code of Practice, and to make a copy available on request.

Having a criminal record will not necessarily debar you from working with the Company. This will depend on the nature of the position, together with the circumstances and background of your offences or other information contained on a disclosure certificate or provided directly to us by a police force.

### **“Regulated Work”**

“Regulated Work” is any work falling under the definition contained in the Protection of Vulnerable Groups (Scotland) Act 2007, Section 91. “Regulated Work” will cover most types of work with children or protected adults: the “Vulnerable Groups”. Please see our Protection of Vulnerable Groups Policy for further information.

Where the position applied for falls under the category of “Regulated Work”, the Company will require the successful candidate to be a member of the Protection of Vulnerable Groups Scheme.

The following positions within the Organisation fall under the category of “Regulated Work”:

[List positions once analysed using the 5 step guidance available on the Disclosure Scotland website at the following link:

[http://www.disclosurescotland.co.uk/guidance/infofororg/chap2\\_regulatedwork/index.html](http://www.disclosurescotland.co.uk/guidance/infofororg/chap2_regulatedwork/index.html)]

[The Company will bear the cost of the candidate’s membership fee.

OR

The candidate is responsible for paying his/her own membership fee in respect of the Scheme.]

An existing employee who is moving into a new position falling under the category of “Regulated Work” will be required to become a member of the PVG Scheme. Where the Company has initiated such a move, the Company will bear the cost of the employee’s membership of the Scheme. Where the move was initiated by the employee, the employee will be required to bear the cost of membership.

Any offer of employment/change of position for a position falling under the category of “Regulated Work”, will be subject to the applicant/employee being a member of the PVG Scheme. It is our policy that an individual will not be able to commence working in a “Regulated Work” position until the Company is in receipt of a PVG Scheme Record showing that the individual is not barred, or under consideration for barring, from undertaking the relevant type(s) of “Regulated Work”.

### **Membership of PVG Scheme**

The PVG Scheme will be phased in over 4 years from February 2011. In the first year, only successful applicants and employees moving into “Regulated Work” positions will require to be members of the Scheme.

[Thereafter, the Company will require existing employees who carry out “Regulated Work” to become members. The Company will consult with existing employees in relation to how this will be implemented closer to the time.

OR

Thereafter, in accordance with the Company’s existing policy in relation to Disclosure renewal, the Company will ask existing employees carrying out “Regulated Work” to become members of the Scheme instead of producing a new Disclosure on the relevant date.]

For existing employees remaining in their positions, the Company will bear the cost of membership of the Scheme.

A refusal by an existing employee to become a member of the PVG Scheme when requested will be deemed Gross Misconduct and may result in a summary dismissal from the Company.

Once an employee is a member of the Scheme, Disclosure Scotland will notify the Company if:

- 1) Any new vetting information has become available:

The Company may ask the employee for a signed mandate giving the Company permission to view the available information. Refusal to sign a mandate may result in disciplinary action being taken against the employee.

Where the Company feels that the new vetting information is relevant to the employee’s position, a meeting will be held with the employee to discuss the information. The Company reserves the right to invoke its Disciplinary Policy where appropriate.

- 2) The employee is under consideration for listing:

Where the employee is under consideration for listing, the Company will not allow the employee to carry out “Regulated Work”. Where possible, the Company will ask the employee to carry out alternative unregulated work within the organisation as a temporary measure to allow Disclosure Scotland time to consider the outcome of the case. If there is no alternative work available, the Company reserves the right to suspend the employee on full pay until a conclusion has been communicated.

Where the employee is barred from carrying out the relevant “Regulated Work” the Company will seek alternative unregulated work for the employee where possible, failing which, will consider terminating the employee’s contract of employment.

It is an offence for an employer to employ an individual to undertake “Regulated Work” that they are barred from carrying out. It is also an offence for any individual who is barred from carrying out “Regulated Work” to apply for a position to undertake such work.

## ***Storage and Sharing of Vetting Information***

Records must be stored securely and should not be kept indefinitely. The Company can keep a record of dates when checks were made, disclosure reference numbers and who the checks related to, but will not store other personal information for longer than is required to achieve the purpose for which it was collected. The Company will comply with the Data Protection Act 1988 in relation to storage of this data.

It is an offence to share someone's disclosure check with anyone else, unless it is absolutely necessary in order to make decisions relating to an individual's suitability to carry out "Regulated Work". Scheme members are free to share their disclosure record should they wish. However, an employer cannot ask to see a Scheme record where they are not employing that individual in "Regulated Work".

If another organisation asks to see an individual's disclosure record, the Company will not oblige.

## **PROTECTION OF VULNERABLE GROUPS POLICY**

### ***The Policy***

The characteristics of abuse of vulnerable groups can take a number of forms and cause victims to suffer pain, fear and distress reaching well beyond the time of the actual incident(s). Victims may be too afraid or embarrassed to raise any complaint. They may be reluctant to discuss their concerns with other people or unsure who to trust or approach with their worries.

There may be some situations where victims are unaware that they are being abused or have difficulty in communicating this information to others. Members of staff have an important role to play in creating a positive and safe environment and recognising the possible signs of abuse or neglect.

This policy also applies to volunteers.

### ***The Policy in Operation***

The aim of this policy is to ensure the safety of vulnerable groups by outlining clear procedures and ensuring that all staff members are clear about their responsibilities.

The protection of vulnerable groups is governed by the Protection of Vulnerable Groups (Scotland) Act 2007.

All members of staff have a responsibility to be aware of this policy and to report any suspicions that they might have concerning abuse of vulnerable groups.

### ***Definitions***

The term "vulnerable groups" applies to both children and protected adults.

A protected adult is an individual aged 16 or over who is in receipt of one or more type of care, health or welfare service.

A child is defined as anyone under 18 years old.

An individual aged 16 or 17 in receipt of one or more type of care will be protected under both categories.

## ***What is abuse?***

Abuse is a violation of an individual's human and civil rights by any other person or persons. It can take a number of forms:

- Physical abuse e.g. hitting, pushing, shaking, inappropriate restraint, force-feeding, forcible administration of medication, neglect or abandonment;
- Sexual abuse e.g. involvement in any sexual activity, exploitation, exposure to pornography, voyeurism and exhibitionism;
- Emotional/psychological abuse e.g. intimidation or humiliation;
- Financial abuse e.g. theft or exerting improper pressure to sign over money from pensions or savings etc.;
- Neglect or acts of omission e.g. being left in wet or soiled clothing, or malnutrition;
- Discriminatory abuse e.g. racial, sexual or religious harassment;
- Personal exploitation – involves denying an individual his/her rights or forcing him/her to perform tasks that are against his/her will;
- Violation of rights e.g. preventing an individual speaking his/her thoughts and opinions;
- Institutional abuse e.g. failure to provide a choice of meals or failure to ensure privacy or dignity;
- Non organic failure to thrive i.e. a child who isn't reaching development milestones and genetic/medical reasons have been eliminated.

## ***Rights of Vulnerable Groups***

The vulnerable groups have the right to:

- be made aware of this policy
- to have alleged incidents recognised and taken seriously
- to receive fair and respectful treatment throughout
- to be involved in any process as appropriate
- to receive information about the outcome where appropriate

## ***Reporting Procedures***

All those making a complaint, allegation, or expression of concern, whether staff, service, users, carers or members of the public should be reassured that they:

- will be taken seriously
- their comments will usually be treated confidentially but their concerns may be shared if they or others are at significant risk
- if service users, they will be given immediate protection from the risk of reprisals or intimidation
- if staff they will be given support and afforded protection .

If an allegation is made to a member of staff or there is a suspicion of abuse then the member of staff should inform their line manager as soon as possible.

### ***Employees/Volunteers Working with Vulnerable Groups***

Employees or volunteers working with vulnerable groups must **NOT**:-

- Harm a child or protected adult;
- Place a child or protected adult at risk of harm;
- Engage in inappropriate conduct involving pornography;
- Engage in inappropriate conduct of a sexual nature involving a child or protected adult;
- Give inappropriate medical treatment to a child or protected adult.

An employee who is found to have committed one of these acts will be guilty of Gross Misconduct and may be summarily dismissed.

### ***Allegations of Abuse***

Where an allegation of abuse is made, the allegation will be investigated thoroughly. This may result in disciplinary action being taken in accordance with our Disciplinary Policy.

Where an allegation of abuse is upheld, the employee may be summarily dismissed.

If an employee is dismissed or moved into an unregulated work position within the organisation for a reason connected to the mistreatment of vulnerable groups, the Company is under a duty to make a referral to Disclosure Scotland under the Protection of Vulnerable Groups (Scotland) Act 2007.

Referrals will also be made if:

(3) the Company was considering dismissal/moving to unregulated work, and before a decision could be reached, the employee left the organisation;

(4) the Company discovers information after the employee has left, that would have resulted in a dismissal/move into unregulated work had it been discovered whilst the employee was working.

Where appropriate, the Company may refer allegations of abuse to another Agency or Disclosure Scotland and in doing so, consideration will be given to:

- The scale of the abuse;
- The risk of harm to others;
- The capacity of the victim to understand the issues of abuse and consent.

In emergency situations (e.g. where there is the risk or occurrence of severe physical injury), where immediate action is needed to safeguard the health or safety of the individual or anyone else who may be at risk, the emergency services must be contacted.

Where a crime is taking place, has just occurred or is suspected, the police must be contacted immediately.

### ***Recruitment and Training***

The organisation will ensure that all staff whose roles include working with vulnerable groups are carefully selected, screened, trained and supervised in accordance with the “Employee and Volunteer Vetting Policy”.

### ***Protection of Vulnerable Groups Scheme***

As part of the recruitment procedure, most Staff that have contact with vulnerable groups will require to be members of the Protection of Vulnerable Groups Scheme. This will depend on whether or not that individual is carrying out “Regulated Work”.



## OFFER LETTER (“REGULATED WORK”)

Dear \_\_\_\_\_

I am writing following your interview for the position of [job title] on [date] and am delighted to confirm that we would like to offer you the position with [name of employer] (‘the Organisation’).

I am enclosing a draft contract of employment which, if you decide to accept the offer, will contain the terms and conditions of your employment with us.

As we discussed, all offers of employment with the Organisation are conditional upon and subject to:

- a report from a medical practitioner; and
- two personal references; and
- a PVG Scheme Record being produced

which, in the Organisation’s opinion, are satisfactory and confirm that you are fit for your proposed duties.

If you decide you would like to accept the offer, please sign and return the enclosed copy of the contract to me by [date]. I look forward to working with you.

Yours sincerely

for and on behalf of the Organisation

## **CONTRACT CLAUSE FOR “Regulated Work” POSITIONS**

It is a condition of your employment that you are a member of the Protection of Vulnerable Groups Scheme in respect of the type of “Regulated Work” relevant to your position described herein.

If the Company is notified that Disclosure Scotland has obtained further vetting information relevant to you, you hereby give your consent for the Company to access that information.

If Disclosure Scotland notifies the Company that you are under consideration for listing, you may be suspended on full pay until such time as Disclosure Scotland communicates an outcome to the Company. If you are barred from undertaking “Regulated Work,” your employment may be terminated.

Where you are not barred from undertaking “Regulated Work” but have been considered for listing, or where new vetting information comes to light, the Company will meet with you to discuss the circumstances surrounding the investigation/new information and may invoke disciplinary proceedings at an appropriate level.

Where appropriate, the Company reserves the right to transfer you to an available unregulated work position within the organisation.

## CODE OF CONDUCT

### *The Policy*

The purpose of this policy is to set out a number of general rules that the Company expects all Employees to adhere to when carrying out their duties. If an Employee breaks the rules set out below then disciplinary action may be taken against them. The list of rules set out below is not exhaustive and other rules may be added to this policy from time to time.

This policy also applies to volunteers.

### *The Policy in Operation*

Employees are required to comply with the following list of rules, **[Add to or delete as appropriate]**

- To attend work at the appointed time and to maintain acceptable time-keeping.
- To observe the company's absence reporting procedure.
- To maintain an appropriate standard of dress and personal appearance in line with company requirements.
- To observe the company's health and safety policies and procedures, and to report any accidents or other instances that result in injury to themselves, fellow Employees or any other individual at work.
- Not to smoke in areas that are not specifically designated for smoking.
- Where company vehicles are provided, to comply with the company's policy on company car use. In particular, Employees must immediately report any accidents involving company vehicles or damages to those vehicles.
- To take care of all company equipment, including company cars.
- To obey all reasonable management instructions.
- To be polite to all customers, clients, suppliers of the company.
- To observe the company's equal opportunities and harassment policies.
- To observe the company's policies and procedures on data protection and use of e-mail, internet and telephone facilities.
- To keep confidential both during and after their employment with the company all information gained in the course of their employment relating to the company and/or its clients, customers or suppliers.
- To observe the company's policies and procedures on staff vetting and the protection of vulnerable groups.
- To give permission for the company to access full vetting information where reasonably requested and where the Employee is undertaking "Regulated Work".

## Gross Misconduct

In addition to the general rules set out above, the Company have set out below a list of behaviours that the Company would consider as gross misconduct. A breach of any of the following rules may result in the Employee's dismissal without notice. Note that this list is not exhaustive. **[Add to or delete as appropriate]**

- Theft
- Fraud
- Falsification of time-sheets or expenses claims or other documentation relating to employment.
- Violent conduct towards fellow employees, customers, clients or suppliers.
- Threatening conduct or swearing at fellow Employees, customer, clients or suppliers.
- Gross insubordination or a repeated refusal to obey a reasonable management instruction.
- Gross negligence.
- Instances of bullying or victimisation
- Instances of direct or indirect discrimination or harassment of fellow employees or prospective employees on the basis of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.
- Instances of direct or indirect discrimination or harassment of clients or customers on the basis of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation in the provision of goods and services.
- Serious breach of the Company's e-mail or internet policy, including the downloading or sending of pornographic or sexually explicit material, and the sending of racially offensive jokes.
- The introduction of viruses into the Company's computer system.
- Attending work whilst unfit as a result of alcohol or illegal drugs, including any instances where alcohol is consumed or illegal drugs used during working hours.
- Serious breach of the Company Health and Safety policy.
- Serious breach of confidentiality.
- Refusal to join the PVG Scheme where requested and the Employee is undertaking "Regulated Work."99