

Protection of Vulnerable Groups (Scotland) Act 2007 Guidance

This guidance is only relevant to gliding clubs within Scotland.

1 Introduction

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." 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").

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. The S&RA document refers to **regulated work**, this guidance note provides some explanation of that concept.

2 Regulated Work

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

- regulated work with children; and
- regulated work with adults.

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.

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). The Scottish Government believes that the

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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.

2.1 Child and protected adult overlap

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.

2.2 How to assess whether an individual is doing Regulated Work

There are five steps to assessing whether an individual is doing regulated work:

(1) Is it work? Work includes paid or unpaid work and other types of work such as caring for or supervising individuals who are participating in any organised activity.

(2) Who are they working with?

Child - definition

Section 97 (POCSA) defines a child as an individual aged under 18 years.

Protected adult - definition

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. Protected adult is therefore a service based definition and avoids labelling adults on the basis of their having a specific condition or disability.

(3) What do they do? 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.

Regulated work with children may be:

- (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.

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

- Teaching, instructing, training or supervising children
- Being in sole charge of children
- Unsupervised contact with children under arrangements made by a responsible person (parent, carer, guardian)
- Providing advice or guidance to a child or to particular children which relates to physical or emotional well-being, education or training

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

Regulated work with adults may be:

- (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

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(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.

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

- Teaching, instructing, training or supervising protected adults
- Being in sole charge of protected adults
- Providing assistance, advice or guidance to a protected adult or particular protected adults which relates to physical or emotional well-being, education or training

(4) Is it their 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, this 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 Act as these will depend on the context.

(5) Are there any exceptions which apply?

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
- attendance is discretionary.

An activity is unlikely to be incidental when:

- targeted at children or protected adults (characterised by where the event is held, where it is advertised, admission policy etc);
- more attractive to children or protected adults than others; or
- attendance is mandatory.

By **incidental activity**, the legislation means the degree to which it could be reasonably foreseen that children or protected adults would attend a particular activity ie; gliding. The key consideration is not so much about the numbers of children or protected adults attending a gliding activity but the purpose and intended client group for the activity. If, for example, the gliding day is specifically for Junior Gliding then it would **not** be an **incidental activity**.

It is suggested that these five steps listed above are always followed in making any assessment.

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

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.

“Organisation” includes employers, employment agencies, employment businesses and voluntary organisations.

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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.

3 Fees

Application to join the PVG Scheme £59

Scheme Record £59

But free of charge when requested at the same time as an application to join

Scheme Record Update £18

Scheme Record requested by the same employer subsequently to a Scheme Record Update

£41 (that is £59 minus £18) if the subsequent application is made within 30 days of the Scheme Record Update being issued

£59 (after more than 30 days)

Scheme Membership Statement

£18 (if requested in an application subsequent to the application to join)

But free of charge when requested at the same time as an application to join

Scheme Record or **Scheme Record Update** for volunteers working in a **qualifying voluntary organisation** in Scotland (see below)

Free of charge

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 still apply.

For the PVG Scheme, a “**qualifying voluntary organisation**” is an organisation which;

- a) 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
- b) 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.