

Information on

**Protecting Vulnerable Groups (PVG) Scheme
and Self Directed Support (SDS)**

July 2011



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This document has been produced to provide information on the interaction between the PVG Scheme and Self Directed Support. More information on the PVG Scheme is available at

www.infoscotland.com/pvgscheme

1 Background to the PVG Scheme

1. The PVG Scheme is Scotland's response to the principal recommendation of the Bichard Inquiry Report which was undertaken following the tragic murders in Soham in 2002. This recommendation called for a registration system for all those who work – whether paid or unpaid - with children and protected adults in the UK that would confirm that there is no known reason why an individual should not work with these groups. This is achieved by Disclosure Scotland maintaining a list of people who are barred from working with children and a list of people who are barred from working with protected adults. The PVG Scheme was established by the Protection of Vulnerable Groups (Scotland) Act 2007.

2. The Scottish Government is committed to helping local communities flourish and become stronger, safer places to live. The PVG scheme, which is run by Disclosure Scotland, strengthens protection for vulnerable groups, reduces bureaucracy and provides a more efficient system. Other types of disclosure will still continue to be available for people doing other types of work which do not involve working with children or protected adults.

What is a protected adult?

An individual aged 16 or over who is provided with particular services further defined at section 94 of the Protection of Vulnerable Groups (Scotland) Act 2007

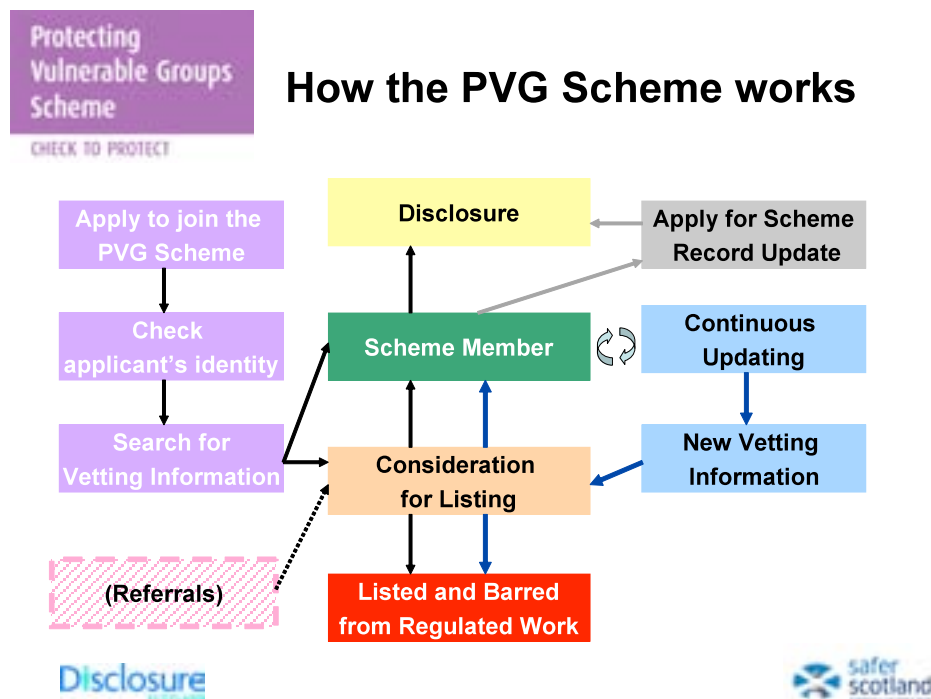
An important principle underpinning PVG is that a person is a protected adult by virtue of a service they receive, not because of a particular condition or disability, and that they are a protected adult only while receiving that service. In that sense, all of us may at one time or another be a protected adult: for example, when receiving medical treatment.

What the PVG Scheme does:

- for the first time in Scotland, have a list of people who are barred from working with protected adults;
- help to ensure that those who have regular contact with children and protected adults through paid and unpaid work do not have a known history of harmful behaviour;
- quick and easy to use, reducing the need for PVG Scheme members to complete a detailed application form for every new job;

- for the first time all personal employers, including those employing a PA (by means of sources such as ILF, or Direct Payments from their Council or those who are self funding) are able to choose to request proof of scheme membership;
- strike a balance between proportionate protection and robust regulation and make it easier for **individual employers to determine who they might safely employ.**

3. The PVG Scheme is run by Disclosure Scotland which receives and considers referrals and take decisions, on behalf of Scottish Ministers, about those people who may be unsuitable to work with children or protected adults.



4. PVG is a membership scheme which ensures that people who are barred from working with certain vulnerable groups are not able to do so. Disclosure Scotland will maintain lists of people who are barred from working with children and those who are barred from working with protected adults. A person who is barred from working with one group is not necessarily barred from working with the other group.

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5. It is illegal for a person to undertake regulated work if they are barred from doing so, and illegal for an organisation to employ a barred person in regulated work. It is not an offence for a personal employer to employ a barred individual to do regulated work, but **it is an offence for a barred individual to do regulated work.**

6. It is not a legal requirement that a person doing regulated work is a member of the PVG scheme. However, the only way for a person to prove that they are not barred is to become a member of the PVG scheme.

7. One of the key principles of the PVG scheme is proportionality. Not everyone who will come into contact with a protected adult will be required to be a scheme member. Determining whether or not an individual will be carrying out “regulated work” is key to deciding whether or not they should become a scheme member. [please refer to page 9 for further information about “regulated work”]

PVG Scheme Membership

8. The process of becoming a PVG scheme member is similar to the process for obtaining an enhanced disclosure. When asking an employee to undertake regulated work that individual should apply to become a member of the scheme.

9. Disclosure Scotland will keep the individual’s PVG Scheme membership and vetting information up to date. This process is called **continuous updating** and is one of the biggest differences between existing disclosures and the PVG Scheme as this means access to disclosure records is much faster because all the information is already held by Disclosure Scotland. If, at any point, the information suggests that the PVG Scheme member may have become unsuitable to do regulated work with children or protected adults, then they will be placed under consideration for listing.

10. One of the benefits of the new PVG scheme is that it will link individuals to various organisations. This means that any organisation with an interest in an individual will be notified by Disclosure Scotland if the person is listed or placed under consideration for listing.

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11. Another important change introduced by the PVG scheme is that the decision about whether the information on a person's disclosure makes them unsuitable to work with vulnerable groups will now be made by **Disclosure Scotland** (i.e. if Disclosure Scotland list the individual they are barred from regulated work). This will result in greater consistency and confidence in the system. Disclosure Scotland will make decisions about whether or not an individual is unsuitable to work with protected groups and will bar them from doing so, however, other decisions relating to the individuals suitability for a certain job will be for the employer to determine. For example, a person who has applied for regulated work which includes driving but who has driving convictions (which would not normally mean someone was barred from regulated work) may not be suitable for that job, this is a decision which will need to be taken by the employer.

Referrals by Organisations

12. For the PVG scheme to run as intended, it is necessary for organisations to tell Disclosure Scotland where it believes an individual may be unsuited to doing regulated work. Organisations should make a referral to Disclosure Scotland when certain criteria are met:

- An individual doing regulated work has done something to harm a child or protected adult; **and**
- The impact is so serious that the organisation has (or would) permanently remove the individual from regulated work.

13. If an organisation believes that an individual has committed behaviour that is harmful to a protected person, then the organisation has a duty to refer the individual to Disclosure Scotland, who will carry out a fair and thorough assessment. During that process the individual who is being assessed will be able to submit written representations and will be made aware of all the information being considered as part of the assessment. During the assessment process an individual will be able to continue working with protected groups – only if a decision is made to bar them will they be unable to carry out regulated work. However, during an assessment process all interested organisations and groups will be made aware that the individual's PVG status has changed. There will also be an appeals process so that an individual can challenge a decision to list them.

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PVG and Personal Employers

14. This guidance relates to the relevance of the PVG scheme to the **employment** of personal assistants **by direct payment recipients**. It does not relate to the purchase of support from a provider (including self-employed providers). There is an important difference in how the PVG scheme applies to personal employers (i.e., including people who receive direct payments and use them to employ a personal assistant). While it is illegal for a person to do this kind of work if they are barred, it is not unlawful for a personal employer to employ a barred person. This is to avoid criminalising a personal employer, and also allows for proportionality of safeguard. **(It should be noted that it is still an offence for a barred person to take up this type of employment.)**

15. A key purpose of the PVG scheme is to protect people. A personal employer can decide whether or not to ask a prospective personal assistant to join the PVG scheme or to provide proof of scheme membership. While it is not mandatory that a personal employer requires a personal assistant to be a scheme member, **it is strongly recommended**.

16. A personal employer is entitled only to see an employee's **Scheme Membership Statement**. (A Scheme Membership Statement confirms that the individual is not listed and barred from working with certain groups.) They are not entitled to ask for or see any other kind of scheme record, other than with the employee's consent. A Scheme Membership Statement confirms that the individual is not listed and barred from working with certain groups. A personal employer must not ask to see any other form of disclosure record for a purpose other than because the individual is doing regulated work for them. To do so is an offence.

17. The Scottish Government Self-directed Support survey 2010 <http://www.scotland.gov.uk/Publications/2010/09/27093422/0> identified that 44% of the 3678 direct payment recipients in the year April 2009- March 2010 purchased support from a personal assistant. The majority of PAs are employed directly by people requiring support.

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Types of Scheme Records

18. There are three types of scheme records available:

- **Scheme Record** – this is the replacement for current enhanced disclosure checks, and will be used by organisations when recruiting someone to do regulated work to join the PVG Scheme for the first time. This particular record will show all conviction information and if the individual is listed/under consideration for listing. The organisation must be a registered body or use an umbrella body to act as a registered body on their behalf. The cost for an individual to join the PVG scheme is £59.
- **Scheme Record Update** – this is a new type of disclosure which provides a quicker and cheaper method of checking that someone is a scheme member, without the need to request the individual's Scheme Record. An employer will be able to apply for a PVG Scheme Record Update if a person is a PVG scheme member already. It will confirm whether any information is held on the person's Scheme Record and whether there have been any changes since the last Scheme Record was issued. The cost of the Scheme Record Update alone is £18.
- **Scheme Record [if requested within 30 days of the Scheme Record Update]** - in instances where a Scheme Record Update indicates that new information exists, then the employer will be able to request a full record. The cost of this is £41.
- **Scheme Membership Statement** (the only record a personal employer is entitled to see) – anyone who is self-employed, or wishes to join the scheme in anticipation of undertaking regulated work at some point in the future, can join the scheme. This only evidences that the individual is not listed or barred from undertaking regulated work. This type of record is also designed for the use of personal employers who employ someone to do regulated work for them and who wish to confirm that the individual is a PVG scheme member. As it is for sharing with personal employers, it does not contain vetting information. The cost of this is £59 [or £18 for existing PVG Scheme members].

Additional information that the Scheme Membership Statement includes is:

- the name, address, date of birth and PVG Scheme membership number of the individual;
- the unique disclosure record number; and
- the name and address of the personal employer on the personal employer's copy.

19. Once an application has been considered by Disclosure Scotland, so long as the individual is not barred, the appropriate scheme record will be issued to the applicant and to the relevant person in the registered body (or personal employer) who countersigned the application.

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Defining Regulated Work

20. The Protection of Vulnerable Groups (Scotland) Act 2007 Act does not specify a list of positions, as the roles and duties that people undertake are flexible and any list would become out of date very quickly. What the 2007 Act does is provide information to allow individuals and organisations to establish which posts constitute regulated work.

21. It is the responsibility of employers to decide whether or not a person doing a particular role is doing regulated work and should be a member of the PVG scheme.

22. There is a five-step checklist to assist this process:

- Q1** Is it work?
- Q2** Who are they working with?
- Q3** What do they do?
- Q4** Is it their normal duties?
- Q5** Are there any exceptions which apply?

23. Work is defined in the Act and is intended to cover a wide variety of circumstances, including paid and unpaid, formal and informal roles.

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

- Caring for protected adults
- 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
- Inspecting adult care services (including any premises used for the purposes of providing such services)

25. All of these activities, with the exception of inspections, must be carried out with “protected adults” for them to be regulated work. More details of who may be a protected adult is given in paragraphs 18 to 25 of the PVG Guidance but the situation is straightforward for direct payment users (as they will always be protected adults, see below).

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2. Self-Directed Support (SDS) and Direct Payments

26. The National Strategy for SDS sits within the framework of Human Rights and Equalities legislation that applies to all public services. All people have the right to **participate** in and access information relating to the decision-making processes that affect their lives and wellbeing.

27. The fundamental principles of SDS are **choice** and **control**. Choice is evident where people are able to choose how they live their life, where they live and what they do. People have control of their support by determining and executing the who, what, when and how of the provision.

28. Self-Directed Support (SDS) is the support individuals and families have after making an informed choice on how their individual budget, or allocation, is used to meet the outcomes they have agreed. SDS means giving people choice and control. The process for deciding on support through SDS is through co-production.

29. Before agreeing a support plan, supported self-assessment is used to help people think about their important outcomes. As part of the assessment people will discuss the budget available towards meeting these outcomes. The main purpose of the process is to give people more control over how their support needs are met, and by whom.

30. The mechanisms for getting support through SDS can be through a Direct Payment, or through the person deciding how their individual budget is allocated by the council to purchase the support. This latter form of SDS is sometimes referred to as an Individual Service Fund. Support can be a combination of these arrangements. Direct payments can also be managed by a third party. Some people may choose to leave the decision on how their support is provided to the council.

31. Only through the Direct Payment route can a person recruit a personal assistant **and** become an employer. In all other SDS options, including using a direct payment to purchase support from the Council or any other provider, the Direct Payment user is not the employer.

32. Self-directed support should be available to all, but it should not be imposed on anyone. There is a duty of care on local authorities, and self-directed support does not dilute that.

More information can be found at www.selfdirectedsupportscotland.org.uk

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SDS and protecting adults at risk

33. Before the introduction of the PVG scheme, employers required employees in certain roles to obtain enhanced disclosure certificates. Previous legislation did not allow registered persons to share this information with others, although the employee could share their own disclosure certificate. However, as direct payments practice evolved many Councils required full sight of content of Enhanced Disclosures before agreeing to the use of Direct Payments to employ personal assistants.

34. The National SDS Strategy highlights the importance of striking a balance between enabling people to take risks and protecting those who need it. In transferring power to individuals, there is also a transfer of responsibility for accepting levels of risk. The principles of legislation in Scotland to protect those at risk require a proportionate response. SDS delivery clearly has to comply with the law, particularly fulfilling the duty of care and councils will need to devise robust and transparent protocols that ensure individuals who wish to employ personal assistants fully **understand and accept** the responsibilities that go with that role.

Interaction of SDS with PVG

35. A personal assistant who is employed by a direct payment recipient to provide them with a welfare service does not have to become a member of the PVG scheme. As with previous disclosure certificates, the individual seeking employment may share the statement or record. No information must be passed onto a third party by anyone else, without the employee's consent.

36. Given the continued right to DPs in implementing the SDS Strategy councils will wish to identify a sound process that informs local protocols and complies with PVG and other relevant statute.

37. Although councils cannot seek access to PVG scheme membership records for personal assistants, they will need to ensure the personal employer understands the importance of scheme membership, the rules on seeking and sharing information, and the risks of employing an unsuitable person. Direct payments should not be refused on the grounds that the council does not have access to scheme membership statements. The support plan agreed between the individual and the council as part of the assessment process should set out how the key outcomes are to be met. Where a council does not consider that a direct payment, or the way in which it will be used to purchase support, will deliver the agreed outcomes the individual should be advised of the reasons. PVG scheme membership is not evidence that a council is fulfilling its duty of care.

Managing risk

38. At present, councils rarely seek sight of references obtained by DP users when recruiting PAs. This is on the basis of considered and careful delegation of

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decision making to the DP user. To protect individuals and hold them accountable for the use of public funds, many councils have locally developed User Agreements. Councils could develop a similar User Agreement that requires the DP recipient to confirm their knowledge of PVG and their acceptance of the responsibility for managing any risk arising from their failure to access the available information. Such an agreement could provide a safe and proportionate framework that demonstrates that a comprehensive explanation of safeguarding responsibilities has been given to the DP user in an appropriate format, and confirms their understanding and acceptance of this.

39. Where a person has employed a PA through a DP, the support plan will be reviewed to assess how well outcomes are being met. If Councils have doubts about the ability of the individual (or third party such a guardian) to act as an employer or to manage risk then Councils need to consider whether a DP is the appropriate mechanism to deliver agreed outcomes.

Referrals and Personal Employers

40. A personal employer cannot make a referral directly to Disclosure Scotland. However, it is important that if individuals have concerns about someone who is working for them, or who has worked for them, then they should raise the issue with the council. The police can also be notified directly.

41. Personal employers are not notified of listing decisions as a matter of course. However, depending on the way in which a personal assistant is employed (for example through an agency), a personal employer may be notified. The police may also contact a personal employer in certain circumstances.

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3. PVG Quick Guide

Personal Employers	Personal Assistants	Local Authority
The PVG Scheme allows personal employers to satisfy themselves that an individual to whom they are offering regulated work is not barred from doing that type of regulated work. When a personal employer requests that an individual applies to join the PVG Scheme for the purposes of becoming a personal assistant, the <u>Scheme Membership Statement</u> is the only type of record available for use by personal employers (see page 8). When requesting a personal assistant to join the PVG Scheme, the personal employer can countersign the application and receive their own copy of the Scheme Membership Statement. A personal employer can ask to see an individual's Scheme Membership Statement in anticipation of them becoming their personal assistant. The Scheme Membership Statement can have been issued some time in the past (but within a reasonable timescale) or the personal employer can ask for a new up to date Scheme Membership Statement. A personal employer must not ask to see any other form of disclosure record for a purpose other than because the individual is doing regulated work for them. To do so is an offence.	Any individual who is not barred may apply to become a member of the PVG Scheme. The <u>Scheme Membership Statement</u> (see page 8) can be issued either to the individual alone in anticipation of doing regulated work in the future or at the request of the personal employer. Where an individual applies to join the PVG Scheme in anticipation of doing regulated work for a personal employer, Disclosure Scotland will carry out authentication by checking the evidence of identity provided by the individual. A Scheme Membership Statement is then issued to the individual and to the personal employer who countersigned the application (if any). Looking after disclosure records All disclosure records contain the individual's PVG Scheme membership number, which will not change. PVG Scheme members should keep a careful note of this number as it will speed up any applications made to Disclosure Scotland at a later date. Any Scheme Record issued to a PVG Scheme member should be retained, in case any organisation wants to see it when the individual seeks to do regulated work elsewhere.	The PVG Act creates a series of offences around the inappropriate handling of disclosure information designed to protect the individual from unfair discrimination; these offences apply to all three types of disclosure records. Lawful sharing by a PVG Scheme member A PVG Scheme member may share their own disclosure record. For example, a Scheme Membership Statement obtained by a PVG Scheme member in respect of one personal employer may be shown by that individual to other people, including Council staff, if not under duress. Job Suitability Just because an individual is a PVG Scheme member (and so not unsuitable to do that type of regulated work) does not necessarily mean that the individual is suitable to work in a specific position. That decision must always be taken by the employer, informed by the content of their Scheme Record as well as other good recruitment and employment practice. The PVG (and other Disclosure) checks should be used as an aid to sensible recruitment practice.

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As the information contained in an individual's record is sensitive and personal, a personal employer should not retain a Scheme Membership Statement but should either hand it back to the individual or destroy it properly (e.g. with a shredder). Information cannot be disclosed without that individual's consent. A personal employer can employ a barred individual without committing an offence. However, an individual who is barred from regulated work and who seeks to do, or does, regulated work for a personal employer is committing an offence.	The most recent Scheme Membership Statement should also be retained, in case any personal employer wants to see it. (Scheme Record Updates are not portable and can be destroyed.)	
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5 FAQs

Q. Who takes responsibility if a Personal Assistant takes up regulated work and is not a PVG member but is on the barred list?

A. This would be the responsibility of the Personal Assistant (person seeking employment) as it is a criminal offence for someone who is barred to take up employment in the regulated workforce.

Q. Is a protected adult the same as a vulnerable adult?

A. No the term “protected adult” is a service based definition and therefore avoids labeling adults on the basis of having a specific condition or disability. A person will only be a protected adult for the duration that they are receiving the service. Therefore some adults will be protected most of the time (eg residents in a care home whilst in the care home) whereas others will only be protected for short periods (eg whilst receiving treatment at the dentist).

Q. What is barring?

A. Barring is the consequence of being listed. Normally, an individual will be listed by either Disclosure Scotland or the Independent Safeguarding Authority (who have a similar function to Disclosure Scotland as regards England and Wales) and they will then be barred across the UK.

Q. How will organisations be informed if someone becomes barred?

A. At the start and end of consideration for listing, all interested parties will be notified of the decision in writing. The interested parties are:

- The individual;
- Any organisation for which Disclosure Scotland knows the individual is doing regulated work; and
- Any relevant regulatory body.

Personal Employers are not notified of listing decisions, but the Police have access to the barred lists and can take action to ensure an individual no longer does regulated work. This might include contacting personal employers in some cases.

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Q. Can Local Authorities make it mandatory within their DP agreement/contract that Personal Assistants are Disclosure checked?

A. No - it is for the individual employer to choose whether to PVG check a Personal Assistant or not. A Local Authority still has a Duty of Care for the Individual Employer and if the Authority has reasonable grounds, in its judgment, for doubting agreed outcomes will be met or there is a risk to the individual, then they can consider whether a Direct Payment is appropriate. In this instance the Local Authority should work very closely with the individual to ensure suitable SDS arrangements are however made.

Q. Where can I go if I want further advice?

A. Contact the Disclosure Scotland helpline on 0870 609 6006 or visit their website at www.disclosurescotland.co.uk

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