

# **RECRUITMENT OF EX- OFFENDERS & PROTECTION OF VULNERABLE GROUPS POLICY**

**We will provide this policy on request at no cost, in large print, in Braille, on tape or in another non written format.**

## RECRUITMENT OF EX-OFFENDERS

### & THE PROTECTION OF VULNERABLE GROUPS SCHEME

This procedure outlines Dunedin Canmore's approach on employing people who have criminal convictions (not covered by the PVG Scheme) and also the application of the Protection of Vulnerable Groups (PVG) Scheme and how the organisation will comply with the terms of the scheme, that is, the use and levels of PVG/disclosure record checks, the process to be followed if the organisation receive vetting/listing or barring information regarding an applicant or employee and the referral process to be followed, if required.

### STATEMENT OF INTENT

Dunedin Canmore is committed to equality of opportunity for all applicants and employees and aims to select people for employment and promotion on the basis of their individual skills, abilities, experience, and knowledge and, where appropriate, qualifications and training.

The organisation fully complies with both the Rehabilitation of Offenders Act 1974 and the provisions of the Protection of Vulnerable Groups (Scotland) Act 2007 (PVG Scheme) by ensuring that robust procedures and processes are in place to protect vulnerable groups from harm whilst in receipt of services from the organisation.

In accordance with the Rehabilitation of Offenders Act 1974 we will therefore consider ex-offenders for employment on their individual merits. However, the organisation's approach towards employing ex-offenders differs, depending on whether the job is or is not exempt from the provisions of the Rehabilitation of Offenders Act 1974 (note that employees undertaking regulated work are not exempt and also covered by the PVG Act.)

The Protection of Vulnerable Groups (Scotland) Act 2007 provides statutory protection to children and protected adults from harm and defines work (paid or unpaid) with children or protected adults as '*regulated work*'. The guidance at **Appendix 3** outlines how the organisation apply the term *regulated work* and identify & assess if a post holders duties fall within the definition of *regulated work* and provides a definition of the term *regulated work* as per the Act. The Protection of Vulnerable Groups (PVG) Scheme is central to the PVG Act and is designed to ensure that those individuals, who are unsuitable, do not gain access to children or protected adults through their work. The scheme also aims to ensure that those individuals who become unsuitable are detected early and prevented from continuing to work, or from seeking work, with children or protected adults. The procedure details how the organisation will adhere/comply with the PVG Act and terms of the PVG scheme.

This procedure should be read in conjunction with the organisation's Employment and Recruitment Procedure, Resolution of Difficulties Procedure, Code of Conduct for Employees and the Secure Handling, Use, Storage and Retention of Disclosure Information Procedure.

## GENERAL PRINCIPLES

Dunedin Canmore complies fully with the Code of Practice, issued by Scottish Ministers, in connection with the use of information provided to registered persons and other recipients of information by Disclosure Scotland, under Part V of the Police Act 1997 and the Protection of Vulnerable Groups Scotland Act 2007, for the purposes of assessing applicants' suitability for certain posts and also existing employees who undertake and carry out regulated work activities.

The PVG Scheme is managed by Disclosure Scotland, which is the body responsible for establishing lists of individuals who are barred from working with vulnerable groups. Those lists provide the organisation and other registered bodies with the framework of identifying whether prospective or existing employees are barred from undertaking regulated work.

It is a criminal offence under the PVG Act for the organisation to employ or knowingly offer regulated work to an individual who is listed as "barred" from undertaking that work.

The organisation will consider any vetting/disclosures made and assess the reliance and circumstances of offenders and take into account the post applied for/or carried out.

Recruiting Managers will also receive guidance and training from Employee Relations in the relevant legislation relating to Employment of Ex-offenders (e.g. the Rehabilitation of Offenders Act 1974) and the Protection of Vulnerable Groups (Scotland) Act 2007 and the recruitment & selection process.

Every subject of a Disclosure/Protection of Vulnerable Groups (PVG) Scheme membership check will receive guidance on Disclosure Scotland's Code of Practice with their application form.

Employees are contractually required to inform the organisation during employment of any pending or criminal charges if and when they arise. If they are unsure if the matter is reportable under the terms of their contract they should discuss this with their Line Manager, in the first instance.

The organisation has the right to request updated disclosure checks/PVG Scheme Records/Scheme Record Updates for all relevant/regulated employees as and when required. The organisation will re-check all PVG Scheme memberships, required for relevant/regulated posts, every 3 years and reserve the right to vary/reduce this, if considered necessary, and will treat the disclosed information sensitively, confidentially and fairly and in accordance with the procedure and Disclosure Scotland guidance.

A "Disclosure" is a certificate issued by Disclosure Scotland, which gives details of an individual's criminal convictions or indicates that there is no such information held. The PVG Scheme provides the following categories of checks:

- PVG Scheme Membership Statement (*applied for by individuals*)

- PVG Scheme Record (*undertaken by organisations*)
- PVG Scheme Record Update (*undertaken by organisations*)

A PVG Scheme Record/Scheme Record Update shows that an individual has not been barred from performing a regulated role involving work with Protected Vulnerable Groups and would also confirm whether they are listed, under consideration or not listed.

#### **TYPES OF CRIMINAL RECORD CHECKS:**

**Basic Disclosure** – shows details of all convictions considered to be unspent under the Rehabilitation of Offenders Act 1974, or states that there are no convictions. These disclosures are not job specific or job related and may be used for any purpose.

**Standard Disclosure** – shows details of all convictions on record, whether spent or unspent under the Rehabilitation of Offenders Act 1974. Even minor convictions and cautions will be included. These disclosures are available for those applying for positions, which are listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and more recently the Rehabilitation of Offenders Act (Exclusions and Exceptions) (Scotland) Order 2003. These include positions where the duties will involve regular contact with children, young people under the age of 18, the elderly, sick and those with learning difficulties.

**Enhanced Disclosure** – shows all details, which are included in the Standard Disclosure and may also contain non-conviction information, which may be considered relevant by the police or other Government relevant bodies. A record/record update shows the type of regulated work in respect of which an individual is a PVG Scheme member (thereby confirming that the individual is not barred from regulated work of that type). The individual's Scheme Record also contains vetting information in relation to convictions and cautions held on central records, relevant non-conviction information, prescribed civil orders and whether the individual is included on the sex offenders register.

Membership of the PVG Scheme is only required when a role has been assessed and identified as a regulated post falling under the remit of the PVG Scheme. Dunedin Canmore does not consider a PVG Scheme Membership Statement (available to individuals) acceptable or suitable for assessing overall suitability for employment as vetting information is not provided on this document.

A Standard or Enhanced Disclosure will only be requested where it is considered relevant and appropriate to a particular post.

“Regulated” posts for the organisation will include anyone who has a great deal of contact with vulnerable groups normally without the presence of other employees and the definition of regulated work will be applied to assess posts. It will not however include those whose contact with vulnerable groups is not actually required by the work that they do but is merely incidental to their role.

## **RECRUITMENT & SELECTION & ASSESSMENT PROCESS**

When a new post occurs, the Employee Relations team in conjunction with the Director will carry out a post risk assessment to see if there is a need for either a Disclosure or PVG Scheme membership check to be made for that particular post.

When applicants apply for a position, either via the Internet or by post, they will receive guidance on the application form and the Rehabilitation of Offenders Act 1974 requirements, which includes a job description. All job descriptions will detail whether a Disclosure/PVG Scheme membership will be required for that particular post and whether the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 also applies and the requirement to declare all convictions, unspent and 'spent'.

Once the employment applications have been received, the recruitment panel will make an assessment of all the applicants' relevant experience, skills, qualifications and ability to do the job and short list applicants to be invited for interview.

The interview panel will select the preferred applicant for the job and make a conditional offer of employment, which is, subject to satisfactory references, medical questionnaire results and a satisfactory Disclosure Certificate or PVG Scheme Record/Update being obtained. For certain posts, particularly those working with vulnerable groups and those undertaking regulated work all pre-employment checks must be received and assessed as satisfactory prior to starting employment with the organisation. The Disclosure or PVG Scheme guidance notes will be sent to the preferred applicant to assist with the completion of the form and ensure the applicant is aware of their responsibilities when completing the form.

In circumstances where an employment reference cannot be obtained due to either the applicant only ever having one employer, or the company that the person worked for has been dissolved then we will accept one employment reference and two character references. If the candidate is unable to obtain any employment references due to this being their first role or previously being self-employed then we will require 3 character references. If for any reason a candidate is unable to provide references in line with the previously stated criteria they will need to be passed to the Director of People Services for authorisation.

The applicant will bring the completed Disclosure or PVG application form, and all the associated documentation, to the Recruitment team, who will verify identity, check the details and counter-sign the form. All items of identification will be copied and a statement made by the Recruitment team stating that originals have been seen.

The form will then be sent to Disclosure Scotland, who will carry out the relevant checks and return a Disclosure Certificate or PVG Scheme Record/Update to the Recruitment team, detailing the relevant information.

The Employee Relations/Recruiting manager will make an initial assessment of the contents of the Disclosure or PVG Scheme Record/Update or the applicants self disclosure on the application form.

The flowchart's at **Appendix 1A & 1B** outline's the process for applicants and existing employees who have satisfactory/unsatisfactory PVG record and also if an employee makes a disclosure or there is a reported incident which requires a risk assessment to be carried out and consideration given as to whether a referral should be made.

Where confirmation is received that an applicant is barred, listed or under consideration for listing, the flow chart at **Appendix 1A** should be followed and if necessary the PVG Risk Assessment Form (**Appendix 2**) should be completed

Where confirmation is received that an employee is barred or listed or under consideration for listing or other vetting information the flowchart outlined at **Appendix 1B** should be followed and if necessary the PVG Risk Assessment Form (**Appendix 2**) should be completed.

Where it is a condition of professional registration that an employee/prospective employee has PVG Scheme membership, the relevant governing body (e.g. SSSC) will be responsible for conducting the necessary check as part of the registration process. The organisation will still be required to carry out a PVG Scheme Record Update as part of the recruitment process. This Scheme Record Update, along with a copy of the original scheme record, will provide the organisation with vetting information to determine suitability and it will also register the organisation's interest in the individual for the purposes of obtaining future information from Disclosure Scotland.

## **RE-CHECKING POLICY**

As a registered body for PVG Scheme purposes, Dunedin Canmore is notified automatically if an employee is being considered for listing or has been barred from regulated work. The organisation is not automatically advised of convictions of a less serious nature which would not trigger consideration for listing or barring. For example: An employee working in a regulated area convicted of theft may not be barred from regulated work, however, the organisation would follow **Appendix 1B** and assess the information in accordance with our procedures and reserve the right to consider such an individual unsuitable for work in a regulated area.

To ensure the continued suitability of individuals for regulated work, the organisation will request a PVG Scheme Record Update as a minimum **every 3 years** in line with the Social Care and Social Work Improvement Scotland (SCSWIS also referred to as Care Inspectorate) recommended best practice. Should a Scheme Record Update indicate that new vetting information has been added since the last check, a full up to date PVG Scheme Membership Record will be obtained to enable the organisation to assess the new information and any vetting/barring information received would be considered in accordance with this procedure, the process which is outlined at **Appendix 1B**.

## **DUTY TO DISCLOSE**

In addition to disclosing criminal convictions, it is a condition of employment for employees to disclose details of any of the following that occur prior to commencing, or during the course of employment:

- Involvement in police investigations
- Criminal charges
- Police cautions
- Disciplinary action taken by professional or regulatory bodies.

The above notification by an existing employee would be considered in accordance with this procedure, and the process which is detailed at **Appendix 1B**.

## **EQUAL OPPORTUNITIES**

Dunedin Canmore will not unlawfully discriminate between persons or groups of persons on the basis of the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

## **SECURE HANDLING, USE, STORAGE AND RETENTION OF DISCLOSURE INFORMATION**

8.1 The Dunedin Canmore will treat the disclosed information sensitively, confidentially and fairly.

8.2 Dunedin Canmore fully complies with Disclosure Scotland's Code of Practice regarding the correct handling, holding and destruction of Disclosure information, provided by Disclosure Scotland under Part V of the Police Act 1997 and the Protection of Vulnerable Groups Scotland Act 2007, for the purpose of assessing an applicant's suitability for a position of trust.

If a Disclosure or PVG Scheme Record is issued and the individual has a query regarding its accuracy, they should contact the Disclosure Scotland.

Please see the Secure Handling, Use, Storage and retention of disclosure information Procedure, for further information.

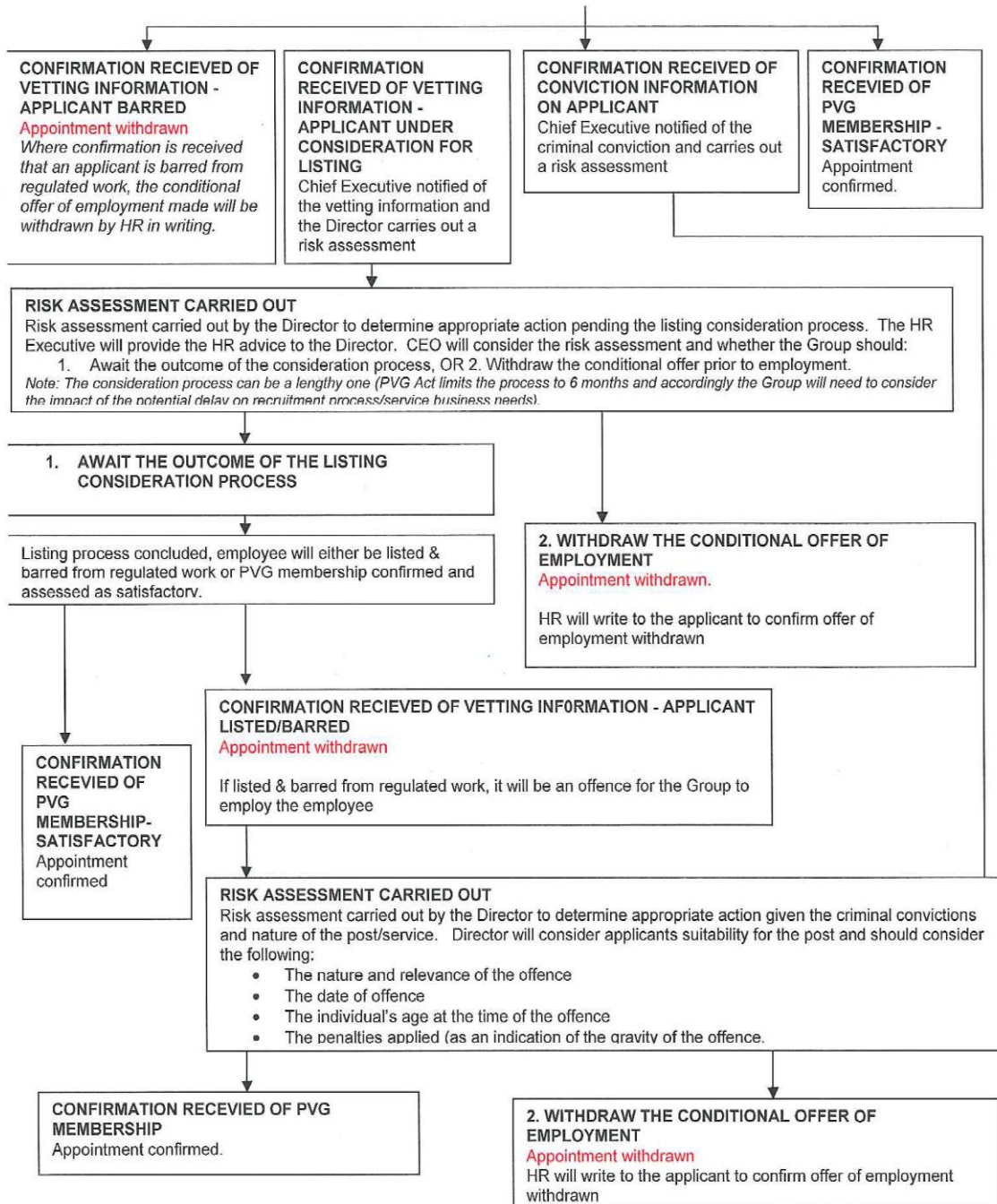
## **PUBLICISING/AVAILABILITY OF THE PROCEDURE**

This procedure will be provided to every employee via the Intranet.

If an employee has any queries they must raise with their Line Manager in the first instance.

**APPLICANT – SATISFACTORY/UNSATISFACTORY PVG**

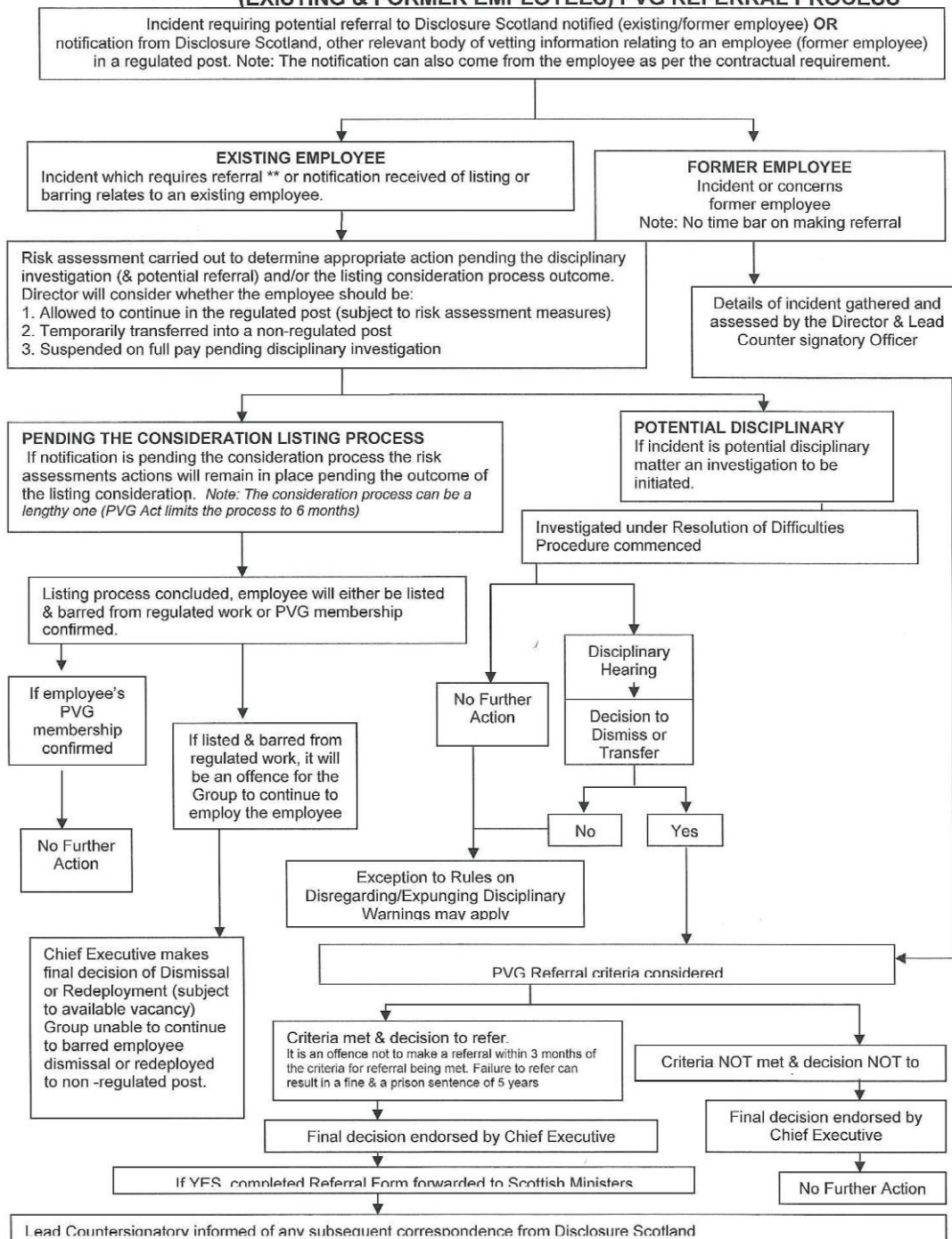
PVG Scheme Record check carried out on the preferred applicant who will be issued with the conditional offer of employment. Disclosure Scotland will issue a PVG scheme record to the Group/HR department. Record and information initially assessed by the HR Executive. The HR Executive will assess if any information recorded is relevant to the post and the appropriate action



**Note: Internal applicants** - PVG checks must also be obtained for internal applicants who are successful in applying for posts that involve regulated work. If an internal applicant is already a PVG member there will be no requirement to obtain a new PVG record unless the employee; is appointed to a promoted post within their current area of regulated work or to a different area i.e. adult to child. In these circumstances it will only be necessary to obtain a PVG Scheme Record Update.



**(EXISTING & FORMER EMPLOYEES) PVG REFERRAL PROCESS**



**\*\*AS PER THE ACT THE GROUNDS FOR REFERRAL** - If an individual doing regulated work is considered to have done something to harm a child or a protected adult; and the impact is sufficiently serious for the employer to permanently remove (or would have) the individual from regulated work. Note: behaviour which may result in referral does not necessarily have to take place in the course of employment.





What control measures could be put in place to minimise risks?					
With control measures in place, please assess the severity and likelihood of potential risks (see attached impact & probability rating form for severity, likelihood and risk rating definitions/scores)					
Severity:		Likelihood:		Risk Rating:	
High Risk:	Employee must be removed from regulated duties and suspended on full pay				
Medium Risk:	Employee must be removed from regulated duties or appropriate supervision arrangements put in place				
Low Risk:	Employee may be allowed to continue regulated work with appropriate supervision arrangements in place				

Director Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Appendix 2 (con)



Appendix 2

- (L) = Low Risk: risks adequately controlled, no immediate action necessary, monitor to ensure continues low)
- (M) = Medium Risk: risk not adequately controlled and further action necessary
- (H) = High Risk: unacceptable risk, immediate action required



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## APPENDIX 3

### GUIDANCE ON KEY WORDS AND TERMS USED WITHIN THE CONTEXT OF THE PVG SCHEME

#### REGULATED WORK

##### 1.1 Definition of Regulated Work

Regulated work falls into two categories - regulated work with Children and regulated Work with Protected Adults. Both types of work are defined within Schedules 2 and 3 of the PVG Act 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

##### 1.2 Identification of Regulated Posts

To determine whether a post requires a disclosure check to be carried out on an applicant, the HR Executive in conjunction with the Director will carry out a regulated post assessment using the Disclosure Scotland regulated post self-assessment tool. A record of the assessment decision will be recorded and retained by HR

The assessment involves an analysis of the duties of the post and the potential for the post holder to come into contact with vulnerable groups i.e. children or adults. Regulated post assessments will be reviewed on an annual basis or earlier if there is changes to post duties and/or working arrangements arise in order to identify any implications for protection of vulnerable groups.

A post list is provided at **Appendix 4** which outlines if a post is requires a disclosure check or is a regulated post and requires a PVG check. This list is retained by HR and reviewed annually.

##### 1.3 Regulated Work With Adults

The PVG Act defines a protected adult as an individual aged 16 or over who is provided with (and thus receives) a type of care, support or welfare service.

There are four categories of services (Regulated Care Services, Health Services, Community Care Services, Welfare Services) receipt of any one of which makes an individual a protected adult.



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 inspecting any premises used for the purposes of providing such services).

An individual may be doing regulated work with adults if they are responsible for the day to day supervision or management of an individual doing regulated work through the activities the individual performs or the establishments in which the individual works. This provision on supervision of an individual does not cover supervising an individual who is in one of the particular positions of trust or responsibility.

#### 1.4 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, the carrying out of an activity or the work in the establishment must be part of the individual's normal duties.

An activity or work is likely to be normal duties when:

- it appears in an individual's job description, task description or contract
- it can be reasonably be anticipated; or
- it occurs regularly

An activity or work is unlikely to be 'normal duties' when:

- done in response to an emergency (unless by an emergency worker)
- arranged at the last minute to stand in for sickness or other unexpected absence of another worker; or
- done as a one-off activity of short duration which is not part of the individual's normal routine or occupation.



Below is a short list of frequently used key words and phrases frequently used within the context of the PVG Scheme and a short definition/explanation is provided, this list is not exhaustive and will be added to and updated to as necessary to ensure all staff are aware and understand these terms when used and discussed within the context of this procedure and processes followed. *Note: Terms marked with an asterisk have a statutory definition; mainly in the PVG Act (which itself has an index at schedule 5).*

**Adults' list\***

The list maintained by Disclosure Scotland of individuals who are unsuitable to work with protected adults.

**Automatic consideration for listing**

A person who is convicted of any of the so-called "relevant offences" set out in schedule 1 of the PVG Act 71 will automatically be placed under consideration for listing in the children's list. There is no equivalent automatic consideration for listing in the adults' list.

**Automatic listing**

A person who is convicted of any of the serious offences set out in the Order made under section 14 of the PVG Act72 will be automatically included in both the children's and adults' lists, without the right to make representation or to appeal the listing.

**Listing and Barring\***

The PVG Act establishes two separate lists, one which contains the names of those individuals who are unsuitable to do regulated work with children and another for those who are unsuitable to do regulated work with protected adults.

'Listing' refers to the inclusion of an individual in the PVG Children's List or the PVG Adults List. 'Barring' is the consequence of listing. Through the PVG Scheme checking process, Disclosure Scotland will advise the Group if an applicant is being considered for listing or is barred from carrying out regulated work with children and/or protected adults. In those circumstances the individual will not become a PVG Scheme Member.

Disclosure Scotland will issue a PVG Scheme Record to individuals who are not barred or being considered for listing. The Scheme Record provides vetting information relating to any criminal convictions that an individual may have and/or relevant information held by the Police. This information enables the employing service to carry out a risk assessment to determine an applicant's suitability for the position for which they have applied



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## APPENDIX 3

### Extract from the Protecting Vulnerable Groups Scheme – Meaning of Harm

The meaning of the word 'harm' is key to the first two grounds for referral. Harm includes:

- physical harm
- psychological harm (for example: causing fear, alarm or distress); and
- unlawful conduct which appropriates or adversely affects another person's property, rights or interests (for example: theft, fraud, embezzlement or extortion).

The Act also provides a meaning for 'risk of harm' which includes:

- attempting to harm another;
- trying to get someone else to harm another;
- encouraging someone to harm themselves; or
- conduct otherwise causing or likely to cause, another to be harmed.

When considering the terms 'harm' and 'risk of harm', it is important for individuals and employers to develop an understanding of what sort of actions might result in someone being harmed, or placed at risk of harm. Examples of harmful behaviours include:

- emotional abuse, perhaps by controlling a child with extreme verbal threats;
- neglecting a person's needs, for example by inappropriate feeding or failing to provide appropriate sanitation;
- inappropriate physical restraint;
- failing to attend to whatever health and safety requirements may be in force;
- supplying illegal or unauthorised drugs.