



**Protecting Vulnerable Groups – consideration for listing
Guidance for Individuals**

Throughout the document you will see references to ‘Scottish Ministers’. Disclosure Scotland do all of the administration for the PVG Scheme and make decisions about unsuitability on behalf of Scottish Ministers.

1. I have received correspondence stating that I am under formal consideration for listing- what does this mean?

Formal Consideration means that Scottish Ministers are making enquiries and carrying out a full assessment to establish if you are unsuitable to carry out regulated work with children and/or adults. The fact that you are under formal consideration for listing will be included on any Scheme Record that you apply for until the consideration process has concluded.

2. What led to me being Scottish Ministers to decide that I should be under formal consideration for listing?

In most cases, you will be under formal consideration for listing because you are a scheme member or have applied for scheme membership and Scottish Ministers have received ‘vetting information’ which indicates that it may be appropriate to include you in one or both of the lists. This information can be a criminal record and/or other relevant police information and would be disclosed on a Scheme Record Disclosure. However, there are other ways that a referral can be made to Scottish Ministers about conduct which can lead to formal consideration. For example, the Courts have a duty to refer you to Scottish Ministers if you are convicted of certain types of offences, as do regulated work providers and certain Regulatory Bodies.

3. Will my employer be told the reason why I am under formal consideration for listing?

If you are currently doing regulated work your employer will be informed that you are under formal consideration for listing in respect of the group with which you are working. We will tell your employer as much as we are legally allowed to. Normally this will only be where the information has come from that has led to formal consideration.

4. Do I need to stop doing regulated work while I am under formal consideration for listing?

Formal consideration does not mean that you are not allowed to do regulated work. However, it is for your employer to think about whether they need to take any action to restrict or suspend your duties while the consideration is on-going. You should refer to your employer’s own policies about child and adult protection and it is likely that your employer will want to discuss this with you.

5. What happens if Scottish Ministers decide that I am unsuitable for regulated work?

The PVG Act requires Scottish Ministers to keep a list of individuals who are unsuitable to work with children and a list of individuals who are unsuitable to work with protected adults. If Scottish Ministers decide to include you in the children's or adults' list, this means that you must not do regulated work with that group. If you are included on both lists, you must not do regulated work with either group.

It is against the law for someone who is included in a list to do regulated work or to seek to do regulated work with the relevant group. For example, an individual who is included in the children's list must not do regulated work with children, but may do regulated work with adults. It is also against the law for someone to employ a listed individual in regulated work with the relevant group. We will write to your employer to let them know that you, as their employee, have been included in a list and are barred from regulated work, and what group(s) this applies to.

If included in a list, you will no longer be permitted to carry out regulated work with that group for that employer or any other employer.

6. Will my employer always be notified if I am barred from regulated work?

An existing employer will be told when you are listed/banned from working with the particular group with whom you are doing regulated work. However, for example, if you are doing regulated work for them with protected adults and Scottish Ministers decide to include you on the children's list, your employer would not be notified. However, if you are doing regulated work for them with children or both groups, your employer would be notified that you were listed in the children's list.

7. If my employer has concerns about the contents of my Scheme Record Disclosure but I am not under formal consideration, do they have to employ me?

Scottish Ministers' decisions are only about whether you are **unsuitable** for the wide scope of roles that regulated work involves. If Scottish Ministers do not decide to include you in the list(s), it will still be for your employer to decide whether you are suitable for a particular regulated work role and Scottish Ministers have no role to play in assessing this.

8. What enquiries do Scottish Ministers make during the course of a formal consideration?

Scottish Ministers may contact a variety of sources for information about you. This could include:

- the Procurator Fiscal or Scottish Court Service for further information about charges and convictions;
- the Police to clarify or add to information they have provided;
- past employers; and
- other organisations or public bodies who may hold relevant information.

Under sections 18-20 of the PVG Act these organisations are obliged to provide any relevant information they hold about the individual.

9. Do I need to provide information?

Under Section 17 of the PVG Act, you are invited and encouraged to provide representations and observations about why you think you should not be included on the list(s). This is your opportunity to make your case to Scottish Ministers and you will be sent copies of all of the information gathered which may be used to base a decision on. The type of information you can provide is up to you. You can provide your own written representations, character references, testimonials from previous employers/colleagues or any other information that you consider relevant. We ask that you provide all representations in written form. If you decide to provide anything from a third party, we may contact them directly for information. If you have difficulty with providing written information, you can contact us to discuss what other options may be available to you.

Section 33 of the PVG Act also requires that you notify Ministers of certain changes during the consideration process, for example changes of name and address. Please contact us as soon as possible if you change your name or address while you are under consideration for listing, so that we can update our records.

Email: pucorrespondence@assured.systems.gov.scot

Telephone: 0300 020 0032

Post: Disclosure Scotland, PO Box 7413, Glasgow, G51 9DY

Any further enquiries regarding this process can be made by contacting 03000 2000 40.

10. What happens if I have a 'clean' Scheme Record Disclosure at the point when I am employed but I am later convicted of an offence?

All PVG scheme members have a Scheme Record which is continuously updated. This is also known as 'ongoing monitoring'. This means that when you are a PVG scheme member and new vetting information comes to light about you this will be added to your Scheme Record and may be disclosed when a Scheme Record Update or new Scheme Record Disclosure is requested.

Depending on the nature of the new vetting information, if it means that you may be unsuitable to carry out regulated work, Scottish Ministers will notify you and your employer that they have begun formal consideration for listing. At this point, your employer will probably want to discuss this with you and may wish to consider whether to apply for a new Scheme Record Disclosure. Not all new vetting information will lead to formal consideration. It is therefore for your employer to decide how often they want to update scheme records to ensure they are adhering to their recruitment policy.

11. What happens if I stop working for my employer during the course of my formal consideration?

It is your responsibility to let Disclosure Scotland know if you are no longer working for an employer but your employer can also let us know that you have stopped working for them.

If you stop working for your employer then they will cease to be an 'interested party' and their details will be removed from your Scheme Record. Scottish Ministers will not then notify the employer about the outcome of the formal consideration.

12. Who will make the final decision about whether I am listed/banned from regulated work?

Disclosure Scotland will make the decision about listing/barring on behalf of Scottish Ministers.

13. I am under formal consideration for listing, how long will it be before I know what the decision is?

Scottish Ministers can disclose that you are under formal consideration for six months from the date on which we decided to place you under consideration. Therefore, we aim to have the consideration completed and a decision made as early as possible and certainly within 6 months for straightforward cases.

However, sometimes we are constrained by the complexity of a case and how long it takes other organisations to provide us with the information that we need to make a decision. In these circumstances, the disclosure period of six months may be extended by a Sheriff on the application of Scottish Ministers to the court.

Where the information which caused Scottish Ministers to consider listing an individual is the subject of legal or disciplinary proceedings (e.g. criminal proceedings), the disclosure period of 6 months runs from the conclusion of those proceedings.

14. What is an employer's 'duty to refer' and when would my employer have to make a referral about me?

Under section 3 of the PVG Act, an employer has a legal duty to refer an individual to Scottish Ministers if they remove them from regulated work because of certain behaviour, whether in work or outside of work. These are set out in section 2 of the PVG Act and are called 'referral grounds':

- the individual has harmed a child or protected adult;
- the individual has placed a child or protected adult at risk of harm;
- the individual has engaged in inappropriate conduct involving pornography;
- the individual had engaged in inappropriate conduct of a sexual nature involving a child or protected adult; or
- the individual has given inappropriate medical treatment to a child or protected adult.

Your employer must make a referral if they have dismissed you or permanently moved you away from regulated work **because** of the referral ground.

If an employer finds out about behaviour of yours, after you stop working for them, which constitutes a referral ground, and they consider that they would or might have dismissed you on the referral ground, had you not otherwise stopped doing the regulated work for them, they must refer you to Scottish Ministers.

Referrals from employers are a very important part of how the PVG scheme helps to keep children and protected adults safe. It is against the law for an employer not to comply with their duty to refer, without reasonable excuse.

15. What if I have never done regulated work and have no intention of ever doing this type of work but I am under formal consideration or listed/banned?

If this is the case, it is likely that you have been referred by the Court Service having been convicted of an offence which means Scottish Ministers must either automatically include you in both lists or they must consider listing/barring you from regulated work. There is a list of offences set out in the PVG legislation that means Scottish Ministers must consider including you in the children's' list, whether or not you have ever done regulated work with children. There is also a list of extremely serious offences which mean that Scottish Ministers must include you in both lists automatically.

You can find details of both lists of offences here:

<http://www.legislation.gov.uk/sdsi/2010/9780111008850/schedules>

<http://www.legislation.gov.uk/asp/2007/14/schedule/1>

However, if you are under consideration for listing as a result of an application to become a PVG scheme member, having been asked by your employer to apply for membership, but don't think that the role is regulated work, please write to us to let us know and we will look into this.

16. How do I get further information?

If you wish to contact us about your case, you should e-mail the Protection Unit at **pucorrespondence@assured.systems.gov.scot** or call our enquiry line on 0300 020 0032. Please note that we will not be able to discuss specific case details with you over the phone due to our data protection responsibilities.

For general enquiries about the Protection of Vulnerable Groups Scheme, you can contact our customer liaison team on 03000 2000 40.

Or you can access PVG information via the Disclosure Scotland website:

http://www.disclosurescotland.co.uk/pvg/pvg_index.html



Protecting Vulnerable Groups - consideration for listing Employer guidance

Throughout the document you will see references to ‘Scottish Ministers’. Disclosure Scotland do all of the administration for the PVG Scheme and make decisions about unsuitability on behalf of Scottish Ministers.

1. What does it mean if someone employed by my organisation is ‘under formal consideration for listing’?

If a person is under formal consideration for listing, it means that Scottish Ministers are making enquiries and carrying out a full assessment to establish if an individual is unsuitable to carry out regulated work with children and/or protected adults. As an employer, you will either be notified that a person is under formal consideration for listing via a Scheme Record Disclosure (if you have applied for one) or we will write to you separately to tell you. This will depend on when we decide that your employee should be under formal consideration.

2. What leads to someone being placed under formal consideration for listing?

Often, an individual will be under formal consideration for listing because they are a scheme member or they have applied for scheme membership and Scottish Ministers have received ‘vetting information’ which indicates that it may be appropriate to include that individual in one or both of the lists. This information can be a criminal record and/or other relevant police information and would be disclosed on a Scheme Record Disclosure. However, there are other ways that a referral can be made to Scottish Ministers about a person’s conduct which can lead to formal consideration. For example, the Courts have a duty to refer if any person is convicted of certain types of offence as do regulated work providers and certain Regulatory Bodies.

3. Will I always be told the reason why my employee is under formal consideration for listing?

No, but we will tell you as much information as we are legally allowed to. This will normally be limited to where the information has come from that has led to formal consideration. You may have to speak with your employee for further information or request a Scheme Record Update.

4. What action do I need to take if someone is under formal consideration for listing?

Formal consideration does not mean the individual is not allowed to do regulated work. However, it is for you to think about whether you need to take any action to restrict or suspend your employee’s duties while the consideration is on-going. You should refer to your organisation’s own policies about child and adult protection.

5. What happens if Scottish Ministers decide someone is unsuitable for regulated work?

The PVG Act requires Scottish Ministers to keep a list of individuals who are unsuitable to work with children and a list of individuals who are unsuitable to work with protected adults. If Scottish Ministers decide to include an individual, employed by you, in either list, this means that they must not do regulated work with that group. If they are included on both lists, they must not do regulated work with either group.

It is against the law for someone who is included in a list to do regulated work or to seek to do regulated work with the relevant group. For example, an individual who is included in the children's list must not do regulated work with children, but may do regulated work with adults. It is also against the law for you to employ a listed individual in regulated work with the relevant group.

6. Will I always be notified if someone working for me is barred from regulated work?

You will be told when someone is listed/banned from working with the particular group for whom they are doing regulated work with you. However, for example, if the person is doing regulated work for you with protected adults and Scottish Ministers decide to include them in the children's list, you would not be notified.

7. If someone is listed/banned, can he or she still do regulated work for me?

No - it is a criminal offence for you to offer regulated work to someone who is barred or to fail to remove a person from regulated work if you have been notified that they are barred. You can continue to employ the individual but they must not be in a role that would be considered to be regulated work.

8. If I have concerns about the contents of a Scheme Record Disclosure but the employee is not under formal consideration, do I have to employ them?

Scottish Ministers' decisions are only about whether a person is **unsuitable** for the wide scope of roles that regulated work involves. If Scottish Ministers do not decide to list/bar, it will be for you to decide whether a person is suitable for your particular regulated work role. Scottish Ministers do not have a role to play in assessing this.

9. Do I need to provide information?

Under Section 20 of the PVG Act, you may be asked to share what information you were given by the individual, or other sources, about the nature and circumstances of their previous convictions at the time you recruited them. You may also be asked to comment on the individual's performance whilst in regulated work and to share any concerns you might have about their conduct. This information may be used to assist with the decision about whether the individual should be barred from working with children and/or protected adults. You will be contacted in due course if further information is required from you.

10. What if someone has a 'clean' Scheme Record Disclosure at the point I employ them but he or she is later convicted of an offence?

All PVG scheme members have a Scheme Record which is continuously updated, this is known as 'ongoing monitoring'. This means that when someone is a PVG scheme member and new vetting information comes to light about them this will be added to their Scheme Record and may be disclosed when a Scheme Record Update or new Scheme Record Disclosure is requested.

Depending on the nature of the new vetting information, if it means that they may be unsuitable to carry out regulated work, Scottish Ministers will notify you that they have begun formal consideration for listing. At this point, you may wish to consider whether to apply for a new Scheme Record Disclosure. Not all new vetting information will lead to formal consideration. It is therefore for you to decide how often you want to update scheme records to ensure you are adhering to your recruitment policy.

11. What if someone stops working for my organisation during the course of their formal consideration?

It is the responsibility of the individual to let Disclosure Scotland know if he or she is no longer working for an employer but you can also let us know that someone has stopped working for you.

If someone stops working for you then you will cease to be an 'interested party' and your details will be removed from the Scheme Record of your former employee. Scottish Ministers will not then notify you about the outcome of the formal consideration. If you receive a notification about the formal consideration for listing or the decision resulting from formal consideration of an individual who no longer does regulated work for you, please contact us to tell us that the individual is no longer employed by you.

12. Who will make the final decision about whether an individual is being listed/barrred from regulated work?

Disclosure Scotland will make the decision about listing/barring on behalf of Scottish Ministers.

13. My employee is under formal consideration for listing, how long will it be before I know what the decision is?

Scottish Ministers can disclose that an individual is under formal consideration for six months from the date on which we decided to place an individual under consideration. Therefore, we aim to have the consideration completed and a decision made as early as possible and certainly within 6 months for straightforward cases.

However, sometimes we are constrained by the complexity of a case and how long it takes other organisations to provide us with the information that we need to make a decision. In these circumstances, the disclosure period of six months may be extended by a Sheriff on the application of Scottish Ministers to the court.

Where the information which caused Scottish Ministers to consider listing an individual is the subject of legal or disciplinary proceedings (e.g. criminal proceedings), the disclosure period of 6 months runs from the conclusion of those proceedings.

14. How do I get further information?

If you wish to contact us about an individual who is under consideration, you should e-mail Disclosure Scotland's Protection Unit: pucorrespondence@assured.systems.gov.scot or call the Protection Unit enquiry line directly on 0300 020 0032. Please note that we will not be able to discuss specific case details with you over the phone due to our data protection responsibilities.

For general enquiries about the Protection of Vulnerable Groups Scheme, you can contact our customer liaison team on 03000 2000 40.

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