

Code of Practice

**In connection with the use of disclosure information
and with the functions of registered persons**

6 June 2022 Edition

If you have any questions concerning the Code of Practice please:

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The Code of Practice is available from the website.

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SG/2022/112

Code of Practice

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Introduction

The Code of Practice

1. This Code of Practice (“the Code”) is published by the Scottish Ministers under section 122 of Part V of the Police Act 1997 (“the 1997 Act”) in connection with:
 - (a) the use of disclosure information provided to registered persons and countersignatories
 - (b) the discharge of any functions by those registered persons and countersignatories under the 1997 Act and under the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”)
2. This Code may be revised from time to time.
3. The Annex and Appendices published together with the Code offer further explanatory information which the Scottish Ministers consider will be useful for registered persons to have regard to when reading and interpreting the Code.

Interpretation

4. In the Code, “**disclosure information**” means information provided, either by post or by an online notification, to a registered person or countersignatory by Disclosure Scotland on behalf of the Scottish Ministers, and which is contained in the following:
 - i. criminal record certificate issued under section 113A of the 1997 Act (referred to in the Code as a “standard disclosure”)
 - ii. enhanced criminal record certificate issued under section 113B of the 1997 Act (referred to in the Code as an “enhanced disclosure”)
 - iii. scheme record disclosed under section 52 of the 2007 Act
 - iv. short scheme record disclosed under section 53 of the 2007 Act
 - v. statement of scheme membership disclosed under section 54 of the 2007 Act

5. In the Code, “**umbrella body**” means an organisation registered under section 120 of the 1997 Act whose purposes of registration include countersigning disclosure applications or disclosure requests for the types of disclosures mentioned in paragraph 4 above on behalf of a third-party organisation not registered with Disclosure Scotland.

Who must comply with the Code?

6. The Code applies to:
 - any person registered under section 120 of the 1997 Act, including bodies corporate and unincorporate, statutory office-holders, employers and umbrella bodies
 - any employees or agents of registered persons, nominated by bodies corporate and unincorporate and statutory office-holders, for the purpose of countersigning applications or making PVG declarations in relation to disclosure requests on behalf of them (hereinafter referred to as “countersignatories”)
 - any employee or individual in a third-party organisation that has received disclosure information from an umbrella body who has countersigned an application or made a PVG declaration on behalf of that third-party organisation
7. The Code also applies to recipients, in the Scottish Administration or other government departments, of disclosure information provided under sections 114 and 116 of the 1997 Act in connection with Crown employment or judicial appointments.
8. All of these persons **must** comply with the Code.
9. The Code does not apply to the individual who is the subject of the disclosure information.

Purpose of the Code

10. The Code is intended:

- to ensure that disclosure information, released by Disclosure Scotland to registered persons and countersignatories, is used properly and lawfully by those persons
- to provide assurance to those individuals applying for either a standard or an enhanced disclosure under the 1997 Act or making a disclosure request under the 2007 Act that disclosure information will be used properly and lawfully by registered persons and countersignatories
- to ensure that disclosure information is handled and stored appropriately by registered persons and is kept for only as long as necessary for the purpose it was requested and thereafter disposed of securely

Obligations under the Code

Statutory obligations

11. There are a number of specific statutory requirements that registered persons and/or countersignatories must comply with. Those relate to:

The provision of registration information

12. The Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2010 (“the Registration Regulations”) require that persons applying for registration must provide certain information to Disclosure Scotland in order to be included in the register.¹ A registered body must have a lead signatory listed in the register.² Those persons applying for registration (or those who are already registered) may seek to nominate a countersignatory to be listed in the register. Where they choose to do so, those persons must also provide certain information relating to that countersignatory.³

¹ Regulation 3(1) and (2) of the [Registration Regulations](#).

² Regulation 12(1)(a) of the [Registration Regulations](#).

³ Regulation 4(1) and (2) of the [Registration Regulations](#).

13. A registered person or countersignatory must notify Disclosure Scotland as soon as practicable of any changes to any of the information they supplied for registration purposes.⁴ Registered persons or countersignatories can contact Disclosure Scotland's registration team via email: DSAPRegistration@disclosurescotland.gov.scot to advise of changes to this information.

Ensuring disclosure applications and requests are made and used, in accordance with the law

14. Registered persons and countersignatories must ensure that disclosure applications made under the 1997 Act, and disclosure requests made under the 2007 Act, are properly and lawfully made and comply with the relevant legislation.⁵ The types of disclosure information affected are the:

- standard disclosure
- enhanced disclosure
- enhanced disclosure with suitability information
- PVG scheme record
- PVG short scheme record
- PVG statement of scheme membership

15. Registered persons and countersignatories must use disclosure information only for the purpose for which it was provided, for example, a disclosure sought for recruitment to a particular job, occupation or role etc. can be used only for that decision. The disclosure information must not be retained and/or its content noted and then used again for an unrelated purpose. Unauthorised disclosure of disclosure information is an offence. Registered persons and countersignatories

⁴ Regulation 3(3) and (4) of the [Registration Regulations](#).

⁵ See paragraphs 140 to 150 of the Annex; see also: [section 120\(5\) and \(6\) of the 1997 Act](#); [articles 4 and 5 of the Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) Order 2013](#); [section 55 of the 2007 Act](#); and [regulations 9, 10 and 12 of the Police Act 1997 \(Criminal Records\) Regulations 2010](#).

must not disclose information in contravention of section 124 of the 1997 Act or sections 66 or 67 of the 2007 Act.⁶

Payment of fees

16. An organisation seeking registration under section 120 of the 1997 Act must pay the appropriate registration fee and fees for any additional countersignatories at the time of the application. Once registered, the annual registration fee for continued registration, including fees for any additional countersignatories, must be paid within 14 days of the request for payment being issued by Disclosure Scotland.⁷ Requests for payment are normally issued to the lead signatory, although organisations can nominate an invoice manager to receive requests for payment instead of the lead signatory.

Data obligations

Handling, storing and destroying disclosure information

17. Registered persons and countersignatories should be aware, at all times, of the need to comply with the General Data Protection Regulations⁸ and the Data Protection Act 2018⁹ (“the 2018 Act”) which both came into force on 25 May 2018.
18. Failure to comply with the principles set out in the 2018 Act may lead to enforcement action by the Information Commissioner’s Office.
19. Registered persons and countersignatories must handle disclosure information responsibly and should not retain it for longer than it is relevant to their needs or for the purposes for which it was obtained.¹⁰ This may be, for example, the date

⁶ Further information about the offences, under the 1997 Act and the 2007 Act, relating to the unlawful use of disclosure information is contained in Appendices B and C to the Annex.

⁷ Regulation 12(1)(b) of the [Registration Regulations](#).

⁸ Information about the General Data Protection Regulations can be found here: [ICO GDPR Information](#).

⁹ Here is the link to the: [Data Protection Act 2018](#).

¹⁰ Article 5(1)(e) General Data Protection Regulations.

on which the recruitment or other relevant decision has been taken, or after the date on which any dispute about the accuracy of the disclosure information has been resolved. For PVG disclosure requests in particular, this could be the date an individual ceases to carry out regulated work for that organisation, or where a record is replaced by an updated scheme record following a further disclosure request being made.

- 20.** Registered persons should have a privacy policy on the handling, retention, storage and destruction of disclosure information. Umbrella bodies should also take reasonable steps to ensure that third-party organisations, on whose behalf they countersign or make declarations, have such a policy. Information about privacy is available on the Information Commissioner Office's website at: [ICO Privacy Information](#).
- 21.** Disclosure information should be stored in secure conditions. Paper documents should be kept in lockable and non-portable storage units. Care should also be taken in relation to electronic disclosure information to prevent unauthorised viewing, transmission, storage, printing or fraudulent manipulation.
- 22.** Where disclosure information has been obtained by an umbrella body, that disclosure information should not be retained by that umbrella body after it has been disclosed to the third-party organisation on whose behalf it was obtained. The umbrella body should take reasonable steps to ensure that the disclosure information in these circumstances is passed between organisations by secure means.
- 23.** Registered persons and countersignatories should take reasonable steps to ensure that the destruction of disclosure information is carried out by suitable and secure means, for example, shredding, pulping or burning. No photocopy or other image of the disclosure information may be retained, for example, of an online disclosure notification. Electronic images should also be deleted permanently.

24. Registered persons and countersignatories should be aware that the loss of disclosure information may constitute a breach of the Code.

Assurance and audit

25. The Code requires registered persons and countersignatories to:

- undertake, at the request of Disclosure Scotland, an audit of their handling, retention, storage and destruction of disclosure information
- comply with any request from Disclosure Scotland for information that relates to their functions under the 1997 Act, the 2007 Act and/or the Code
- report to Disclosure Scotland any evidence of failure, either on their own part or on the part of another party, to comply with the Code
- report to Disclosure Scotland any reasonable suspicion that an offence has been committed under sections 123 or 124 of the 1997 Act (see Appendix B of the Annex) or sections 65 to 67 of the 2007 Act (see Appendix C of the Annex)

Failure to comply with the obligations in the Code

26. Under section 122(3) of the 1997 Act, Disclosure Scotland may refuse to issue disclosures in cases where it considers that:

- a registered person or countersignatory who countersigned an application for a standard or enhanced disclosure or made a declaration in relation to a PVG disclosure request has failed to comply with the Code; or
- a third-party organisation or person on whose behalf the registered person countersigned an application for a standard or enhanced disclosure or made a declaration in relation to a PVG disclosure request has failed to comply with the Code

27. If a registered body is removed from the register then no further disclosure applications or disclosure requests of the types mentioned in paragraph 4 above using the registered body's registration details will be accepted. If an individual

countersignatory is removed from the register, that person will no longer be able to countersign disclosure applications or disclosure requests of the types mentioned in paragraph 4 above, and the use of the countersignatory's registration details will no longer be accepted. The process around removal does provide for representations to be made, and at least 56 days will elapse before either type of removal is put into effect.

- 28.** Disclosure Scotland also has a power to suspend a registered body's registration. This power may be used if the prescribed conditions for registration, as set out in regulation 12(1) of the Registration Regulations, are not met. For example, if registration fees are not paid within 14 days of being invoiced, or if a registered body that is a body corporate or unincorporate does not have a lead signatory in place.
- 29.** Separately, where the Scottish Ministers believe that a registered person or a person on whose behalf a registered person has acted has failed to comply with the Code, powers under section 122(4) of the 1997 Act allow Ministers to remove the registered person, or impose conditions on them in respect of their continued registration.
- 30.** Disclosure Scotland may also refuse to issue disclosures in cases where it considers the conditions of registration (set out in regulation 12(1) of the Registration Regulations) have not been met. The sanction of suspension, provided for in regulation 12(2) of the Registration Regulations, will not be imposed without proper investigation, and only as a last resort.¹¹

¹¹ Those conditions are that a registered person who is a body corporate or unincorporate must always have a lead signatory listed in the register, and a registered person must ensure that the relevant registration fee has been paid timeously.

Offences relating to the use of disclosure information

- 31.** Registered persons and countersignatories should also familiarise themselves of and understand the offences set out in sections 123 and 124 of the 1997 Act,¹² and sections 65 to 67 of the 2007 Act.¹³
- 32.** Disclosure information must be handled **only** by those individuals within an organisation entitled to have access to it in the course of their duties. These individuals must also comply with the Code.
- 33.** It is an offence for a registered person or countersignatory to disclose disclosure information to any person who is not an employee of the registered person; or who is not a member, officer or employee of the registered body (or in the case of an umbrella body, a member, officer or employee of the third-party organisation on whose behalf the disclosure information was obtained) unless a relevant legal exception applies.¹⁴
- 34.** It is also an offence to:
- disclose disclosure information to any member, officer or employee where it is not related to that member's, officer's or employee's duties¹⁵
 - knowingly make a false statement for the purpose of obtaining, or enabling another person to obtain disclosure information¹⁶
- 35.** If Disclosure Scotland is of the view that any offence may have been committed it will consider whether information about any of the behaviours identified in paragraphs 32 to 34 above should be passed to the police for further investigation. Separately, registered persons may have their registration with Disclosure Scotland suspended or removed.

¹² See Appendix B of the Annex.

¹³ See Appendix C of the Annex.

¹⁴ See [section 124\(1\) of the 1997 Act](#) and [section 66\(1\) of the 2007 Act](#) for the respective offences.

¹⁵ See [section 124\(3\) of the 1997 Act](#) and [section 66\(3\) of the 2007 Act](#) for the respective offences.

¹⁶ See [section 123\(2\) of the 1997 Act](#) and [section 65\(2\) of the 2007 Act](#) for the respective offences.

Annex to the Code of Practice

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Annex to the Code of Practice

Introduction

Purpose of the Annex

1. It is recommended that this Annex (“the Annex”) and its Appendices are read in conjunction with the Code of Practice (“the Code”) published by the Scottish Ministers under section 122 of the Police Act 1997 (“the 1997 Act”).
2. The Annex offers further information about the provisions of the Code and how registered persons and countersignatories can ensure compliance with the obligations set out in the Code. The Annex also offers general information about how Scotland’s disclosure system operates.

Interpretation

3. This paragraph gives the meaning of words and phrases used in the Annex:
 - **“the 1974 Act”** means the Rehabilitation of Offenders Act 1974 (Appendix A sets out details of the 1974 Act and information about asking an exempted question)
 - **“the 1997 Act”** means the Police Act 1997, Part V of which makes provision about criminal record certificates
 - **“the 2007 Act”** means the Protection of Vulnerable Groups (Scotland) Act 2007 which makes provision for disclosures related to regulated work
 - **“the 2013 Order”** means the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013, as amended
 - **“countersignatory”** means a person nominated by a body corporate or unincorporate or statutory officeholder as being authorised to act for that body or person in relation to countersigning applications for standard or enhanced disclosures or making declarations in relation to PVG disclosure requests

- “**countersigning an application**” means countersigning applications for standard or enhanced disclosures or making declarations in relation to PVG disclosure requests
- “**disclosure information**” means information which is provided to a registered person or countersignatory by Disclosure Scotland and which is contained in, or included with, the following:
 - criminal record certificate issued under section 113A of the 1997 Act (referred to in this Annex as “**standard disclosure**”, see paragraphs 139 to 142 below)
 - enhanced criminal record certificate issued under section 113B of the 1997 Act (referred to in this Annex as “**enhanced disclosure**”, see paragraphs 143 to 147 below)
 - scheme record disclosed under section 52 of the 2007 Act (referred to in this Annex as “**scheme record**”, see paragraphs 152 to 154 below)
 - short scheme record disclosed under section 53 of the 2007 Act (referred to in this Annex as “**short scheme record**”, see paragraphs 155 to 158 below)
 - statement of scheme membership disclosed under section 54 of the 2007 Act (referred to in this Annex as “**scheme membership statement**”, see paragraphs 159 to 161 below)
- “**Disclosure Scotland**” is an executive agency of the Scottish Government that discharges Scottish Ministers’ functions under the 1997 Act and Part 2 of the 2007 Act by issuing disclosure information in support of recruitment and appointment decisions, and for certain registration and licensing purposes. Disclosure Scotland also discharges Scottish Ministers’ functions under Part 1 of the 2007 Act that relate to the lists of individuals barred from doing regulated work with children and/or protected adults (there is information about Disclosure Scotland and disclosures under the 1997 and 2007 Acts at paragraphs 130 to 161 below)
- “**exempted question**” means asking an individual a question about spent convictions for certain offences in circumstances in which the usual effect

of the 1974 Act (that is, if a conviction is spent it does not have to be revealed) has been excluded by an Order made by the Scottish Ministers; those circumstances being in relation to offences that are listed in schedule 8A of the 1997 Act but only:

- if the individual was under the age of 18 at the date of conviction, and 7 years and 6 months have not passed since the date of conviction; or
- if the individual was aged 18 or over at the date of conviction, and 15 years have not passed since the date of conviction
- “**lead signatory**” means the person who signs the registration application and acts on behalf of a body corporate or unincorporate
- “**protected conviction**” means a conviction that Disclosure Scotland will not include on a standard disclosure, an enhanced disclosure, or a PVG scheme record. (A full definition of protected conviction is given in Appendix D to this Annex.)
- “**umbrella body**” means a body, that is a registered person under section 120 of the 1997 Act, which countersigns applications for standard or enhanced disclosures or makes declarations in relation to PVG disclosure requests for either a scheme record or a short scheme record at the request of third-party organisations or individuals that are not themselves registered with Disclosure Scotland but who are able to ask the exempted question

Compliance with the Code

4. The Code (paragraphs 11 to 24) identifies obligations which registered persons and countersignatories are required to meet. If Disclosure Scotland acting on behalf of the Scottish Ministers believe that a registered person or a countersignatory has failed to comply with the Code, then they may refuse to issue disclosure information or may remove that person from the register of registered persons, or impose conditions on them as regards their continued inclusion in that register.¹⁷

¹⁷ [Section 122\(3\) and \(4\) of the 1997 Act.](#)

5. In relation to disclosure information, registered persons and countersignatories should take reasonable steps to ensure that those to whom they pass the information observe the Code. This includes umbrella bodies who may be required to show evidence about what processes they have in place to ensure that the third-party organisations/individuals they pass information on to are also adhering to the Code. An umbrella body will therefore need to have some knowledge about the third-party organisations/individuals who are offering employment and about the nature of that employment. Umbrella bodies should also make those organisations/individuals on whose behalf they are countersigning disclosure applications or making declarations for disclosure requests aware of the terms of the Code and the consequences of non-compliance with the Code and should seek written assurances from the third-party organisations/individuals to confirm that they are observing and adhering to the Code. It will also be reasonable, in some circumstances, for umbrella bodies to visit the third-party organisations/individuals to check that the Code is being observed by them. If an umbrella body has reason to believe that a third-party organisation/individual has failed to comply with the Code, it must immediately report the circumstances to Disclosure Scotland.

Registration

Who can apply for registration under section 120 of the 1997 Act?

6. Persons wishing to countersign applications for standard and enhanced disclosures, or make declarations in relation to PVG disclosure requests for a scheme record or a short scheme record in Scotland, must be registered with Disclosure Scotland. Registration applications are made to Disclosure Scotland under section 120 of Part V of the 1997 Act. If the disclosure applications that an organisation intends to make are for recruitment or licensing elsewhere in the UK then the appropriate disclosure service should be contacted: the Disclosure and Barring Service for England and Wales, and AccessNI for Northern Ireland.

7. Those applying for registration must satisfy certain conditions. The conditions are that the person applying for registration must be:
 - a body corporate or unincorporate
 - a person appointed as a statutory office-holder, or
 - an individual who employs others in the course of a business

8. In addition, the person (whether that person is an individual, a person appointed as a statutory office-holder, or a body corporate or unincorporate) must be able to satisfy Disclosure Scotland that they are likely to ask an exempted question by virtue of the 2013 Order. That means that they hold a role or roles that entitles them to access standard disclosures, enhanced disclosures or PVG scheme record checks. Where the applicant, once successfully registered, intends to countersign applications or make PVG declarations or requests on behalf of other bodies or individuals, then the applicant must be able to satisfy Disclosure Scotland that the bodies or individuals, on whose behalf they will act, are entitled to ask an exempted question.

9. Disclosure Scotland, as part of the initial registration process, will carry out checks to determine whether or not those applying to be registered persons, lead signatories or countersignatories are suitable persons to have access to disclosure information. Individuals, if considered suitable, will be advised in writing that they have been accepted and they will receive details of their registered body code and unique countersignatory code. In addition, Disclosure Scotland will carry out regular ongoing suitability checks to confirm that those listed in the register remain suitable to receive disclosure information.

10. As well as these suitability checks, and prior to a registration application being concluded, Disclosure Scotland will require copies of the organisation's privacy policy on the handling, retention, storage and destruction of disclosure information.

11. For any organisation whose registration application includes acting in relation to PVG disclosure requests, it would also be helpful if a copy of its referral policy

could be provided with the application. The referral policy should cover what action will be taken by the organisation in cases where a member of staff is dismissed or transferred following disciplinary action relating to one of the referral grounds set out in section 2 of the 2007 Act.¹⁸ The referral policy should also cover cases where the organisation would or might have dismissed or transferred on a referral ground had not the individual stopped doing regulated work for the organisation.

Umbrella bodies

- 12.** Umbrella bodies may countersign applications for standard or enhanced disclosures or make declarations in relation to PVG disclosure requests on behalf of other third-party organisations/individuals.
- 13.** Umbrella bodies countersigning disclosure applications on behalf of others must satisfy themselves that those third-party organisations/individuals on whose behalf they intend to countersign applications, are entitled to receive disclosure information by virtue of the third-party organisation/individuals being able to: for standard disclosures, ask an exempted question under the 1974 Act by virtue of the 2013 Order, or for enhanced disclosures, ask the exempted question under the 1974 Act for a prescribed purpose as set out in regulations 9, 10 and 12 the Police Act 1997 Criminal Records (Scotland) Regulations 2010 (“the Criminal Records Regulations”).¹⁹
- 14.** Umbrella bodies making declarations in relation to PVG disclosure requests on behalf of others must satisfy themselves that those third-party organisations/individuals on whose behalf they intend to make declarations are entitled to ask an exempted question under the 1974 Act for the purpose of regulated work with children and/or adults, and entitled to receive disclosure information by virtue of the third-party organisation/individuals satisfying the disclosure conditions A to C, as set out in section 55 of the 2007 Act.

¹⁸ The referral grounds are set out at [section 2 of the 2007 Act](#).

¹⁹ The [Criminal Records Regulations](#) set out the prescribed purposes.

- 15.** Umbrella bodies must take reasonable steps to ensure that the third-party organisations/individuals on whose behalf they act and to whom they then pass the disclosure information also comply with the requirements of the Code regarding the use of disclosure information. Reasonable steps include keeping records of those on whose behalf they act and documenting evidence showing how they are ensuring those third-party organisations/individuals comply with the Code.
- 16.** When disclosure information is passed from an umbrella body to the third-party organisation/individual that should be done securely. Umbrella bodies should ensure, for example, that an organisation receiving disclosure information is able to store it securely, and securely destroy it once the purpose for which it was requested has been completed.
- 17.** Failure, by an umbrella body, to take appropriate action to ensure compliance with the Code by a third-party organisation/individual making use of the services of an umbrella body, may result in Disclosure Scotland refusing to process applications or requests for that umbrella body. In addition, failure by any third-party organisation/individual making use of the services of an umbrella body to comply with the requirements of the Code may result in either the umbrella body or Disclosure Scotland refusing to process applications or requests for that third-party organisation/individual.
- 18.** Umbrella bodies acting on behalf of third-party organisations/individuals may be asked by Disclosure Scotland to disclose details of the third-party organisations/individuals. This information may be required as part of Disclosure Scotland's quality assurance process and in connection with Disclosure Scotland's functions under the 1997 Act and/or the 2007 Act. Umbrella bodies must supply details upon request.
- 19.** An umbrella body acting on behalf of an organisation which is claiming to be a Qualifying Voluntary Organisation (see paragraphs 22 and 23 below) must ensure that the organisation is entitled to that status. Disclosure Scotland will ask

any umbrella body acting in this way to provide evidence of entitlement to free checks having been verified.

20. Disclosure Scotland recommends that umbrella bodies should remind third-party organisations/individuals on whose behalf they act for PVG disclosure requests of the importance of having a referral policy. That referral policy should cover what will be done in any case where a member of staff is dismissed or transferred following disciplinary action relating to one of the referral grounds set out in section 2 of the 2007 Act.²⁰ The referral policy should also cover cases where the organisation would or might have dismissed or transferred on a referral ground had not the individual stopped doing regulated work for the organisation.
21. Registered bodies who intend to cease acting as umbrella bodies must supply Disclosure Scotland with contact details of every third-party organisation/individual on whose behalf they have countersigned applications or made PVG declarations or requests to enable Disclosure Scotland to continue effectively with its safeguarding functions under the 2007 Act.

Voluntary Organisations and Qualifying Voluntary Organisations

22. Voluntary Organisations and Qualifying Voluntary Organisations can make use of disclosure checks in connection with the recruitment of paid staff and unpaid volunteers. To assist these organisations with the disclosure process, Volunteer Scotland Disclosure Services (VSDS) has been established under the auspices of Volunteer Scotland. VSDS is registered with Disclosure Scotland as an umbrella body. For voluntary sector organisations in Scotland that enrol with it, VSDS (at no charge to the organisation) will countersign applications and disclosure requests under the 1997 and 2007 Acts free of charge, except for any disclosure fee that may be due in respect of paid staff, and in accordance with the Code and this Annex. Appendix E contains more information about voluntary organisations and Qualifying Voluntary Organisations, including advice about

²⁰ The referral grounds are set out at [section 2 of the 2007 Act](#).

them registering directly with Disclosure Scotland rather than using the services of VSDS. Organisations can contact VSDS directly at:

disclosures@volunteerscotland.org.uk.

- 23.** VSDS must ensure that the organisations on whose behalf it acts are entitled to receive disclosure information by virtue of their being entitled to ask an exempted question for the purposes of regulated work or other exempt positions. VSDS must also ensure that enrolled organisations comply with the Code. Failure, by persons or bodies corporate or unincorporate who use VSDS as an umbrella body, to comply with the requirements of VSDS and the Code may result in refusal by VSDS to handle applications or requests on their behalf. More information about VSDS is available on their website at: [Volunteer Scotland Disclosure Services](#) or [Volunteer Scotland Disclosure Checks](#).

The Register

- 24.** The Police Act (Criminal Records) (Registration) (Scotland) Regulations 2010 (“the Registration Regulations”) set out the details that are to be included in the register. These details are:
- where the person is an individual who employs others in the course of a business:
 - i. the surname, all forenames and title, any previous surnames and forenames, home address, date, place and country of birth of the person and any current business address, business telephone or fax number or email address which has been notified by that person to the Scottish Ministers for communication purposes
 - ii. the date on which the name of the person, was first included in the register
 - iii. the number assigned to the person being included
 - iv. the nature and purpose of the exempted question, that the person is likely to ask
 - v. a specimen of the signature of the person being included
 - where the person is a body corporate or unincorporate:

- i. the surname, all forenames and title, any previous surnames and forenames, home address, date, place and country of birth of the lead signatory and any countersignatory and any current business address, business telephone or fax number or email address which has been notified by that body to the Scottish Ministers for communication purposes
- ii. the date on which the name of the lead signatory and any countersignatory was first included in the register
- iii. the number assigned to the lead signatory and any countersignatory on being included
- iv. the nature and purpose of the exempted question, if any, that the body is likely to ask
- v. a specimen of the signature of the lead signatory and any countersignatory
- vi. whether the body is likely to countersign applications under section 113A (criminal record certificates) or 113B (enhanced criminal record certificates) of the 1997 Act or whether the body is likely to make declarations in relation to disclosure requests under section 52 (disclosure of scheme records) or 53 (disclosure of short scheme records) of the 2007 Act at the request of bodies or individuals asking an exempted question and, if so, the nature and purpose of that question
- vii. if the person is a body corporate, the surname, all forenames and title of the chief executive and the chairperson (unless either person is the lead signatory)
- if the person is a statutory office-holder:
 - i. the surname, all forenames and title, any previous surnames and forenames, home address, date, place and country of birth of the person and any countersignatory and any current business address, business telephone or fax number or email address which has been notified to the Scottish Ministers for communication purposes
 - ii. the date on which the name of the person and any countersignatory was first included in the register

- iii. the number assigned to the person and any countersignatory on being included
- iv. the nature and purpose of the exempted question that the person is likely to ask
- v. a specimen of the signature of the person and any countersignatory

25. “Business address” means the address of the principal place of business of the person, but where the person’s principal place of business is outside Scotland and that person has a place of business in Scotland, then the address of the place of business in Scotland will also be included in the register.

26. Applicants for registration must supply the information set out above. As regards the information about the nature and purpose of the exempted question, applicants should specify the basis they (or the third-party organisations/individuals on whose behalf they will be countersigning applications or making declarations for PVG disclosures) have for asking the exempted question and the type of question they are likely to ask (see Appendix A).

27. A registered person or lead signatory must notify Disclosure Scotland in writing, as soon as is reasonably practicable, of the details of any alteration to the information listed above that has been supplied by that person for the purposes of inclusion in the register. If a countersignatory provides the details, Disclosure Scotland may verify the alteration with the registered person or lead signatory.

28. Inclusion in the register means that a person is eligible to receive disclosure information from Disclosure Scotland. Registration details are confidential and are not made known by Disclosure Scotland to anyone without permission or lawful authority. Registration does not imply any endorsement by Disclosure Scotland of an organisation and registered persons should not imply otherwise and should not incorporate the Disclosure Scotland logo into any publicity, promotional or other material without the express agreement of Disclosure Scotland.

- 29.** An applicant for registration must ensure the application fee for registration and the nomination of countersignatories (if applicable) is paid. The fee in respect of an application for inclusion in the register is £75. Where the registered person is a body corporate or unincorporated or a statutory office holder, this fee is for the lead signatory and up to four countersignatories **as long as** the countersignatories are registered at the same time as the lead signatory. If a registered person seeks to enter a countersignatory after the date upon which they themselves were included in the register, there will be an additional fee of £15 per countersignatory. If a registered person enters four countersignatories at the time of their own registration, the fee for the entry of a fifth (or any more subsequent countersignatories) will be £15 per countersignatory.
- 30.** Failure to pay the prescribed fee for initial registration may lead to the registration being suspended, during which time no further disclosure applications or requests will be processed. This will depend on the facts and circumstances of each case.
- 31.** There is also an annual fee payable for continued registration. This is payable on the first year anniversary, and each subsequent anniversary, of the date of registration. This fee is £75 for the lead signatory and up to four countersignatories. There is also an annual fee of £15 for a fifth and each subsequent countersignatory. In advance of the registered person's annual subscription falling due, Disclosure Scotland will, if applicable, provide them with a full list of all current countersignatories and provide the opportunity to the registered person to delete any that are no longer active. This will also allow the registered person an opportunity to update any other areas of the registration details that are inaccurate, for example, telephone contact details. Removing a countersignatory or ending registration will not incur a fee.
- 32.** All registered persons must pay an annual subscription fee for continued registration, including Qualifying Voluntary Organisations who register directly with Disclosure Scotland.

- 33.** In cases where Disclosure Scotland does not receive payment of the annual subscription fee, the right of registered persons to make disclosure applications without prior payment (in other words, to request payment by invoice) may be suspended. Suspension could lead to registered bodies not being able to apply for and receive disclosure information.

How to apply for registration

- 34.** An application for registration must be made in the manner determined by the Scottish Ministers. Organisations can find information about how to register here: [Register with Disclosure Scotland](#). This information will also be included in the registration pack sent to all registration applicants.

Identity

- 35.** Each application for registration must be accompanied by such evidence of identity as may be requested by Disclosure Scotland. Full details of required identification are provided on the Disclosure Scotland website: [Register with Disclosure Scotland](#). There is also useful information about verifying identity on the UK Government's website at: [How to prove and verify someone's identity](#).

Lead signatories and countersignatories for bodies corporate and unincorporate

- 36.** Each application for registration of a body corporate or unincorporate must be signed by a person who has the authority to act on behalf of that body. If the application for registration is successful, that person will be included in the register and will be known as the lead signatory. The application must also contain a supporting statement explaining the organisation's business and the purpose(s) for which disclosure applications or requests will be made by it.

37. It is recommended that the lead signatory for a body corporate or unincorporate should be a person who has a measure of management responsibility for those making recruitment decisions.
38. The lead signatory will be the principal point of contact between Disclosure Scotland and the registered body on all matters connected with registration.
39. Each body corporate or unincorporate represented on the register must only have one lead signatory at all times. If the lead signatory of such a registered body leaves or is removed from the register by Disclosure Scotland, a replacement must be appointed without delay. This is a condition of continued registration. If a new lead signatory is not notified to Disclosure Scotland, then Disclosure Scotland may suspend the registration or may refuse to process disclosure applications or requests.
40. A lead signatory can countersign disclosure applications and requests but often that role will be fulfilled on a day-to-day basis by nominated countersignatories.
41. Registered persons and countersignatories are not permitted to countersign or make declarations on a disclosure application or request of which they are the subject. If a registered person or countersignatory requires a disclosure then they must ensure that another countersignatory registered with Disclosure Scotland countersigns or makes a declaration on their disclosure application or request.

Request from a registered person or a countersignatory to be removed from the register

42. A registered person (who is an individual employing others in the course of a business) who considers that they are no longer likely to wish to countersign applications for standard or enhanced disclosures or to make declarations in relation to PVG disclosure requests should ask to be removed from the register. The effect of this request will be to end their registration in its entirety. For registered persons who are a body corporate or unincorporate, or a

statutory office-holder, such a request for removal from the register must be signed by the lead signatory. The effect of this request will be to end the body's registration in its entirety.

- 43.** Separately, individual countersignatories can also request removal from the register. This request should be countersigned by the lead signatory for the body and this will end the countersignatory's ability to act on behalf of that body in the future.

Removal of a registered person from the register by Disclosure Scotland

Persons no longer likely to act in relation to disclosure applications or requests

- 44.** Disclosure Scotland may remove from the register any person who is, in the opinion of Disclosure Scotland, no longer likely to wish to countersign applications for standard or enhanced disclosures or to make declarations in relation to PVG disclosure requests.²¹
- 45.** Before removing a person from the register in these circumstances, Disclosure Scotland must notify that person in writing that they are of that opinion, the reasons for that opinion and they must inform that person of their right to make representations about that opinion.
- 46.** A registered person who has been so notified may, within 28 days of the receipt of such notice, make representations in writing to Disclosure Scotland as to why they should not be removed from the register. Disclosure Scotland must consider any such representations. After doing so, Disclosure Scotland must inform the registered person, that either:
- they are of the opinion that that person is unlikely to wish to countersign applications for standard or enhanced disclosures or to make declarations

²¹ Regulation 5 of the [Registration Regulations](#).

in relation to PVG disclosure requests and the reasons for that opinion, and confirm that that person will be removed from the register at the end of a further period of 28 days, or

- they do not propose to take any further action

47. If no representations are received within 28 days, Disclosure Scotland may remove the person from the register at the end of that 28 day period. The person can, **at any time** after a period of 28 days has elapsed since their removal, apply to re-join the register on payment of the appropriate fee.

Death, etc.

48. Where Disclosure Scotland is satisfied that a registered person (other than a registered body) or a person nominated by them, has died or is incapable for any other reason (for example, the organisation has gone into liquidation), of countersigning applications for standard or enhanced disclosures or making declarations in relation to PVG disclosure requests, then they do not need to follow the procedure detailed above and can remove the person from the register immediately.

Persons deemed not suitable to access disclosure information

Registered persons

49. Under section 120A of the 1997 Act Disclosure Scotland may refuse to include in or may remove a registered person from the register, if, in the opinion of Disclosure Scotland the registration of that person is likely to make it possible for information to become available to (or if information has become available to) an individual who is not a suitable person to have access to information. In making that assessment of suitability, Disclosure Scotland, where appropriate, may use information from police forces. The procedure relating to refusal/removal in such circumstances is set out in section 124A of the 1997 Act and regulation 6 of the Registration Regulations.

50. A person who is notified of Disclosure Scotland's intention to refuse their registration or to remove them from the register will be advised of:
- the reasons for the decision
 - the period within which the decision will be implemented
 - the right to request a review of Disclosure Scotland's decision, including the period of time within which the person must request the review
 - the period which must elapse before the person may re-apply to be included in the register
51. A person who has been notified of Disclosure Scotland's decision to either refuse their registration or remove them from the register may, within 28 days of the receipt of their notification, require Disclosure Scotland to review their decision by sending written notice of their reasons for such a request. Disclosure Scotland will notify the person of the results of their review whether or not there has been a consequential change in their decision.
52. Where a person **has not** requested a review of Disclosure Scotland's decision to refuse to include that person in, or to remove that person from, the register – the decision must be implemented 28 days after the notification of Disclosure Scotland's decision to the person.
53. Where a person **has** requested a review of Disclosure Scotland's decision to refuse to include that person in, or to remove that person from, the register – the decision must be implemented 28 days after the notification of the result of Disclosure Scotland's review.

Countersignatories

54. Separately, Disclosure Scotland may refuse to accept, or continue to accept, the nomination of an individual as a countersignatory if, in the opinion of Disclosure Scotland, that individual is not a suitable person to have access to disclosure information. In making that assessment of suitability, Disclosure Scotland, where appropriate, may use information from police forces, and have regard to whether

or not their nomination has previously been refused, or they have previously been a person who has been removed from the register, or has had conditions imposed on them as respects their continued listing in the register. The detailed procedure relating to the refusal to accept or continue to accept a countersignatory nomination is set out in the Registration Regulations at regulation 4.

- 55.** The Registration Regulations require that before refusing to accept, or to continue to accept the nomination of a countersignatory, Disclosure Scotland must notify in writing:
- the body or statutory office-holder who nominated the individual; and
 - the individual nominated
- of their intention not to accept, or continue to accept, their nomination for inclusion as a countersignatory.
- 56.** Any individual who has been notified by Disclosure Scotland of its intention not to accept or continue to accept their nomination may, within 28 days, make representations in writing as to why Disclosure Scotland should not take the action proposed. After considering such representations, Disclosure Scotland shall notify the person of the outcome; whether they have decided to refuse to accept or continue to accept the nomination, or not.
- 57.** If representations **are received** and Disclosure Scotland decides to refuse to include that person in, or to remove that person, from the register, any action to remove the individual will be implemented 28 days after the notification of the outcome of Disclosure Scotland's considerations of their representations.
- 58.** If representations **are not received** within 28 days, Disclosure Scotland may proceed, at the end of that period, to refuse to accept, or continue to accept, that individual's nomination.
- 59.** No person may seek inclusion in the register or be nominated for inclusion in the register if Disclosure Scotland has, within the period of 2 years prior to the date on which the application is received by them, refused to include or has removed

that person from the register on the basis that information might have or did become available to an individual who was not a suitable person to have access to disclosure information.

Factors to consider before making a disclosure application or request

Identity of the individual

60. Recruiting organisations must satisfy themselves of the identity of the individuals who are applying for positions or of those already employed by them who are, for example, joining the PVG Scheme for the first time. Although Disclosure Scotland may conduct its own identity checks, these will be supplementary to the checks undertaken by recruiting organisations. It is recommended that recruiting organisations retain details of identity checks undertaken by them in case of further enquiry by Disclosure Scotland or any other person.
61. Disclosure Scotland will refuse to process a disclosure application or request in cases where it is not satisfied about an applicant's identity. Disclosure Scotland will remove any scheme member from the PVG scheme if it transpires that fraudulent identity information was used to gain scheme membership. Disclosure Scotland will also notify the police and any organisation for whom it knows the individual was doing regulated work.
62. Recruiting organisations must request and verify documentary evidence of identity from individuals they are interviewing or recruiting. In line with practice since the Bichard Inquiry Report of June 2004, **three** pieces of information should be requested from an individual to support identification. Where possible **one** should be photographic (for example, a current passport, or a current UK driving licence photocard (full or provisional)), **one** should confirm the name and address of the individual (for example, council tax statement, or bank statement) and **one** should confirm the date of birth of the individual. There is detailed advice about identity checking on the UK Government website which should be

followed: [Identity Checking Guidelines](#). There is also information on the Centre for the Protection of the National Infrastructure's website that might be of help: [CPNI Pre-employment Screening](#).

- 63.** Where an individual claims to have changed their name by marriage, common law relationship or any other mechanism, the organisation should seek evidence of such a change. If an individual is a PVG scheme member, organisations should also advise the individual that they are required to tell Disclosure Scotland of the name change if they have not already done so.²²
- 64.** A disclosure certificate or record issued by Disclosure Scotland **must not** be taken as evidence of identity. This is because there is not likely to be a discernible way for a recruiting organisation to be aware of the practices of the previous employer who obtained a prior disclosure certificate or record.

Individuals who were born outwith the UK or who have lived outwith the UK

- 65.** There are two issues to be considered regarding the appointment of individuals who were born or who have lived outwith the UK: the first relates to the identity of the individual and the second relates to checking their criminal record.

Identity

- 66.** Recruiting organisations should carry out the same rigorous checks for overseas nationals as they do for UK nationals. Once again, the advice on the UK Government website about identity checking is relevant albeit on this occasion the part relating to foreign national and documents should be used: [Identity Checking Guidelines](#). There is also information on the Centre for the Protection of the National Infrastructure's website that might be of help: [CPNI Pre-employment Screening](#).

²² If a scheme member changes their name or legal gender, [section 50 of the 2007 Act](#) requires the scheme member to notify the Scottish Ministers of that change within 3 months of the change taking effect.

Criminal record checks

- 67.** While it may seem to be of limited value to obtain a disclosure for a foreign national, employers should still make an application or request for disclosure information about an individual who was born or who has lived outwith the UK and who has no, or very little, address history in the UK. There are two reasons: firstly, even in the short time that a person has lived in the UK, they may have accrued a criminal record that could be relevant to a recruitment decision. Secondly, for individuals being recruited to engage in regulated work with either children or protected adults, or both, under the 2007 Act they will become scheme members and will be subject to continuous monitoring. That monitoring will provide assurance to an employer that the individual is not barred from regulated work and ensure that they will be notified if the membership status of the individual who is doing regulated work for them changes.
- 68.** Disclosure Scotland has limited access to criminal record information held outside the United Kingdom. Disclosure Scotland can request information about EU nationals from their home jurisdiction when it is processing an application made by an individual to work with children. Twelve EU member states listed here: [EU nationals applying for roles with children](#) for the enhanced disclosure, and here: [EU nationals applying for roles with children](#) for the PVG scheme participate in this arrangement.
- 69.** For any other non-UK countries, employers/employing organisations can ask prospective employees and existing members of staff to provide a criminal record certificate, where available, from their government or an appropriate government/police agency in the country where they were born and/or resided. The Home Office has provided guidance about [criminal records checks for overseas applicants](#) that may be of help.
- 70.** Documents obtained from another country may need to be translated from the relevant language into English and they may contain details of offences which may not have a direct equivalent or similar offence in Scots law. Disclosure

Scotland has no role in this process, and additional costs associated with these checks will need to be met by the individual and/or the employer/employing organisation.

Use and handling of disclosure information

71. Registered persons and countersignatories must use disclosure information only for the purpose for which it was provided. In doing so, they should have regard to any guidance issued by Disclosure Scotland on the use of the disclosure information.
72. Standard and enhanced disclosure information is made available to registered persons under the 1997 Act for specific purposes, for example, the purpose of assisting recruitment decisions for particular positions/roles or licences. A disclosure sought for recruitment to a particular job, occupation or role etc. can be used **only** for that decision and must not be retained and/or its content noted and then used again for an unrelated purpose (see also paragraph 88 and Appendix B below for further information on this obligation).

Factors to take into account when considering disclosure information

73. For someone with convictions, gainful employment is often the most successful way for them to avoid re-offending. The Scottish Government is keen to ensure that those individuals who may have convictions are not unfairly treated in the process of considering them for employment/volunteering positions/roles. As part of the 'Scotland Works For You' alliance, Disclosure Scotland has developed guidance with public, private and voluntary sector partners to give advice to employing organisations on how to fairly and safely assess an individual's convictions, and to individuals with previous convictions to help them make positive job applications. This guidance is available at [Scotland Works For You](#).
74. It is recommended that recruiting organisations should have a written policy on the recruitment of people who have a previous conviction which includes any

criteria that is to be applied during their recruitment process. A sample policy on the [recruitment of individuals with a previous conviction](#) is available to download from Disclosure Scotland's website.

75. Disclosure Scotland also works with Release Scotland, an employer-led partnership, designed to promote the benefits to employers of fair recruitment. More information on Release Scotland is available at: www.releasescotland.com.
76. Under the PVG scheme, an employer/employing organisation is entitled to use all vetting information on a scheme record to inform a recruitment or retention decision. An individual who is allowed to become and/or remain a PVG scheme member is deemed to be not unsuitable to do regulated work of the type to which their scheme membership relates. However, an employer/organisation's decision about a particular job or role (which is a decision for it alone to make) will be based on all of the information it gathers, including any vetting information, and that decision may be that the scheme member is not suitable to do a particular job.
77. An employer/employing organisation will receive disclosure information about an individual from Disclosure Scotland to help them make a decision. That information should not be relied upon as the sole piece of information upon which an employment decision is made. It is expected that disclosure information will inform only part of the process of deciding on that individual's job application or as part of their ongoing assessment about the individual to remain in regulated work.
78. An employer/employing organisation should consider the implications that could arise for them/it if an individual being recruited for, or seeking to continue in, regulated work **refuses to consent** to PVG scheme membership or disclosure information requests.
79. When reviewing disclosure information as part of their decision-making recruiters or employers should consider the following:

- whether the conviction or other matter(s) revealed on the disclosure is relevant to the position in question
- the nature of any offence or other matter(s) revealed
- the individual's age at the date of conviction
- the length of the time since the offence or other relevant matter(s) occurred
- whether the individual has a pattern of offending behaviour or other relevant matters
- whether the individual's circumstances have changed since the offending behaviour or the other relevant matters
- for the enhanced disclosure with suitability information only, whether the person is barred from working with particular vulnerable groups

The effect of being listed in the PVG children's or adults' list

- 80.** Section 34 of the 2007 Act makes it an offence for an individual to do, or to seek or agree to do, any regulated work from which the individual is barred.
- 81.** An individual who has been listed in either (or both) the children's list or adults' list (maintained by Disclosure Scotland under section 1 of the 2007 Act), is barred from doing the corresponding type of work elsewhere in the UK.
- 82.** An individual who is included in a corresponding barred list by the Disclosure and Barring Service²³ is also barred from regulated work with children or protected adults or both, in Scotland.
- 83.** Section 35 of the 2007 Act makes it an offence for any organisation (which is defined in section 97 of the 2007 Act and includes individuals who, acting in the course of a business, employ or otherwise give work to other individuals) to offer regulated work to an individual who is barred from that type of regulated work. (See Appendix C for more detailed information on the offences under the 2007 Act.)

²³ These Lists are held under the Safeguarding Vulnerable Groups Act 2006.

- 84.** In addition, the Protection of Vulnerable Groups (Scotland) Act 2007 (Removal of Barred Individuals from Regulated Work) Regulations 2010 provide that where an organisation for which an individual is doing regulated work is notified by Disclosure Scotland that the individual has been barred, that organisation is prohibited from permitting the individual to do that regulated work and must remove the individual from that regulated work.
- 85.** As a barred individual cannot participate in the PVG scheme in respect of the type(s) of regulated work from which they are barred, it is an offence under section 35(4) of the 2007 Act if an organisation does not remove a barred person from doing regulated work having been notified by Disclosure Scotland that the individual must be removed from the type of regulated work from which they are barred.²⁴

Use of disclosure information

- 86.** An important aspect of receiving disclosure information is that registered persons and countersignatories should have a privacy policy on the handling, retention, storage and destruction of disclosure information. This applies to registered persons acting on behalf of their own organisation, and also those registered persons acting as an umbrella body. Umbrella bodies, should take reasonable steps to ensure that the third-party organisations/individuals on whose behalf they countersign or make declarations also have a written privacy policy.
- 87.** Information about privacy is available on the Information Commissioner's website at: [ICO Privacy Information](#).
- 88.** Registered persons, countersignatories and others in receipt of disclosure information must handle disclosure information responsibly. It must be handled only by those individuals within an organisation entitled to have access to it in the course of their duties, for example, individuals involved in a recruitment

²⁴ The offences in sections 34 to 37 of the 2007 Act are disapplied in relation to work as a foster carer under a permanence order or under a compulsory supervision order, see [section 96\(3\) of the 2007 Act](#).

decision would have a legitimate need to see disclosure information. These individuals must also comply with the Code.

89. Unauthorised disclosure of disclosure information is an offence. Registered persons and countersignatories must not disclose information in contravention of section 124 of the 1997 Act or sections 66 or 67 of the 2007 Act. Further detail of the offences, under the 1997 Act and the 2007 Act, relating to the unlawful use of disclosure information is contained in Appendices B and C to this Annex. The organisation is not allowed to pass disclosure information on to anyone who is not entitled to have access to it the course of their duties. If it appears that an offence has been committed, Disclosure Scotland may contact the police.
90. An offence is not committed if the written consent of the subject of the disclosure has been obtained to allow the information to be shared with third parties.
91. There may be circumstances when a registered person or countersignatory in possession of disclosure information is asked to reveal details of the information to a third party in connection with legal proceedings. This could happen, for example, in a case submitted to an Employment Tribunal. In such circumstances, the registered person or countersignatory should inform Disclosure Scotland immediately of any such request and **prior to** the release of any disclosure information.
92. In most circumstances, the 2007 Act prevents third parties, who are not directly employing or considering employing an individual to do regulated work, from asking for sight of their disclosure record.
93. The exception to this rule, being where organisations that provide education or health services contract with a third-party organisation/individual to provide transport services to children or protected adults. The Protection of Vulnerable Groups (Scotland) Act 2007 (Unlawful Requests for Scheme Records) (Prescribed Circumstances) Regulations 2010 ('the Prescribed Circumstances Regulations') set out the third-party organisations which, when using a 'contractor' to provide transport services for children or protected adults, can ask

to see a disclosure record for any employee that the contractor wishes to use in order to provide the transport services. The third-party organisations set out in the Prescribed Circumstances Regulations are:

- a council
- a school
- an educational establishment
- a health body
- an independent hospital
- a private psychiatric hospital
- an independent clinic
- independent medical agency

The 'contractor' (that is, the employer) can only show the disclosure record to the third-party organisation if the employee concerned has given their consent in writing to their employer. The consent should be freely given and not under duress. The employer should keep a copy of this written consent. Disclosure Scotland is not involved in this arrangement.

Storage

- 94.** If disclosure information is to be stored, for example until a recruitment process is concluded, it should be held in secure conditions. If documents are held in lockable and non-portable storage units, keys or combinations for such storage units should not be freely available to all individuals within an organisation and access to storage units and rooms containing storage units should be restricted to named individuals. Care should also be taken, with regard to electronic disclosure information that unauthorised viewing, transmission, storage, printing or fraudulent manipulation does not take place.

Data Protection considerations

- 95.** As well as complying with the Code, registered persons and countersignatories should be aware of and adhere to the General Data Protection Regulations²⁵ and the Data Protection Act 2018,²⁶ both of which came into force on 25 May 2018. Personal information, including disclosure information, should be kept only for as long as it is required for the purposes for which it was obtained, for example, this may be the date on which a recruitment or other relevant decision has been taken, or after the date on which any dispute about the accuracy of the disclosure information has been resolved or in the case of PVG disclosure records, this may be the date an individual ceases to carry out regulated work for the organisation.
- 96.** Third-party organisations/individuals, in receipt of disclosure information from an umbrella body, should not retain it for longer than it is relevant to their needs.
- 97.** Where disclosure information was obtained by a registered person acting as an umbrella body, the position is different; they should not retain the disclosure information once it has been disclosed to those on whose behalf it was obtained.

Record keeping

- 98.** Some registered bodies may be subject to regulatory inspections which may raise questions about use of Disclosure Scotland's products. As such, it is recommended that records of having made a disclosure application or request and having received disclosure information, are kept by registered persons, countersignatories and umbrella bodies for future reference. For example, they may be required during a visit by a regulator in connection with the registration of a care service, or for the purposes of an inspection. It is also recommended that a written record is kept by umbrella bodies of third-party organisations/individuals to whom disclosure information is passed for the purposes of a clear audit trail.

²⁵ More information can be found here: [Guide to the General Data Protection Regulation](#).

²⁶ Here is the link to the: [Data Protection Act 2018](#).

This information may also be requested by Disclosure Scotland as part of its assurance and audit work, see paragraphs 101 to 107 below. Disclosure Scotland's website has an example of a [registered body tracking document](#) which may be used for this purpose.

99. The importance of record keeping also arises when an employee or volunteer who has been doing regulated work leaves an organisation. When that happens, the organisation should inform Disclosure Scotland so that the link between the scheme member and organisation, which is needed for continuous monitoring to work effectively, can be severed.

Destruction

100. The destruction of disclosure information should be by suitable secure means, for example, shredding or pulping. Disclosure information should not be kept in an insecure receptacle, such as a waste bin or confidential waste sack, while awaiting destruction. No photocopy or other electronic image of the disclosure information may be retained, and electronic images should be deleted permanently.

Assurance and audit

101. One way in which Disclosure Scotland may satisfy itself that registered persons and countersignatories are complying with their responsibilities under the 1997 Act, the 2007 Act and/or the Code, is by undertaking assurance and audit checks. These checks will allow Disclosure Scotland to assess, for example, an organisation's policy and practice on handling, retention, storage and destruction of disclosure information. These checks might be a requirement to:
- complete a self-assessment audit form which will be issued by Disclosure Scotland to registered persons on a periodic basis
 - this form will contain questions which, when answered, will assist Disclosure Scotland in determining adherence by the registered person to the Code and the law

- co-operate with Disclosure Scotland’s staff during any audit checks, including visits to a registered person’s premises, in order that Disclosure Scotland can be satisfied that those registered persons (and others entitled to have access to the disclosure information in the course of their duties) are using the disclosure information in accordance with the Code and the law

102. In conducting audits, Disclosure Scotland’s staff will, in particular, seek to:

- ensure that the obligations set out in the Code for registered persons and countersignatories are being met
- confirm that registered persons and countersignatories are making the appropriate type of disclosure application or request
- confirm that disclosure information provided by Disclosure Scotland is not being used by registered persons and countersignatories unfairly or unlawfully, to the detriment of any person
- advise registered persons and countersignatories on good practice on the use of disclosure information
- identify those registered persons who are no longer likely to wish to countersign applications or make declarations on disclosure requests (possibly because they no longer work for the organisation or because their roles have changed and they no longer have a role in processing disclosure information)

103. Following receipt of complaints from individuals who have been the subject of disclosures or from members of the public about the behaviour of registered persons or countersignatories, Disclosure Scotland may undertake audits which may include visits to organisations. Audits may also be carried out at the request of a registered person, a lead signatory or a countersignatory, if that person believes that they or any person within their organisation is or may be in breach of the Code.

104. Disclosure Scotland will normally pre-arrange audits. However, it reserves the right to undertake unannounced audits.

- 105.** Disclosure Scotland will provide written reports, with recommendations where appropriate, to those who have been the subject of an audit. There may be requirements detailed in the report. Requirements must be met within agreed timescales. Disclosure Scotland may undertake further audits to verify that any recommendations or requirements have been implemented/complied with.
- 106.** If an audit indicates to Disclosure Scotland that an offence may have been committed, it will report this to the police. Disclosure Scotland may share any audit report with the police and with any relevant regulatory/governing bodies or other agencies if it feels it is appropriate to do so.
- 107.** In addition to co-operating with Disclosure Scotland in relation to audit and assurance checks, Disclosure Scotland requires that registered persons and countersignatories will report to Disclosure Scotland any evidence of failure, either on their own part or on the part of another party to comply with the Code, or any reasonable suspicion that an offence has been committed under sections 123 and 124 of the 1997 Act (see Appendix B) or sections 65 to 67 of the 2007 Act (see Appendix C).

Validity of disclosures

- 108.** All disclosure information is accurate at the time the relevant checks were completed. There is a difference in what happens subsequently between the 1997 Act and the 2007 Act.
- 109.** Disclosures issued under the 1997 Act do not benefit from continuous monitoring. This means that if the organisation uses standard and enhanced disclosures under the 1997 Act for its recruitment and licensing purposes it is recommended that a new disclosure be sought for each new recruit or when someone is moving to another post.

- 110.** Under the 2007 Act, PVG scheme members are subject to continuous monitoring and any new vetting information which indicates that they might be unsuitable to do the corresponding type(s) of regulated work will be considered by Disclosure Scotland. Disclosure Scotland will keep a record of parties who have an interest in the membership status of an individual, usually by virtue of them countersigning a PVG disclosure application or request, and will notify those persons if a PVG scheme member's membership status changes. What this means in practice is as follows.
- 111.** Disclosure Scotland will **only** notify interested parties if a scheme member is placed under consideration for listing as a result of new vetting information. It will not inform employers/employing organisations about every piece of vetting information, unless a request is made for the disclosure of a scheme member's scheme record. It is for employers/employing organisations to decide how to respond to a notification, and that response may include having a discussion with the scheme member. With the consent of the scheme member, an employer/employing organisation may wish to submit a PVG short scheme record disclosure request and pay the appropriate fee to obtain a record of the new vetting information.
- 112.** It should be noted that if an individual is placed under consideration for listing following an organisational referral, information that it was an organisational referral that led to the consideration case being started will not be disclosed on the individual's scheme record.
- 113.** After consideration of all relevant information, Disclosure Scotland will reach a decision about whether the scheme member ought to be included in one or both barred lists. If the scheme member is not listed, they will be advised accordingly, as will all interested parties. This outcome means that the scheme member is able to continue to do regulated work. If the scheme member is listed, they will be removed from the PVG scheme, and will no longer be able to do regulated work of the type from which they have been barred. Disclosure Scotland will also notify interested parties. If the individual is doing regulated

work, the employer/organisation for whom they are doing so must remove the individual from that work.

- 114.** Disclosure Scotland may also notify professional regulatory bodies, if appropriate, so that those bodies can take action against the individual in line with their own fitness to practice procedures.

Disputes

- 115.** The individual who is the subject of disclosure information may raise a dispute with Disclosure Scotland if they believe the disclosure information to be inaccurate. If Disclosure Scotland is satisfied, after investigation, that the disclosure information is inaccurate it will issue a new disclosure certificate or record. Any re-issued standard or enhanced disclosure certificate or PVG disclosure record will be copied to the registered person who countersigned the application or request.

- 116.** There is information on Disclosure Scotland's website about what to do [if something is wrong with your disclosure certificate](#).

Request from the subject of the disclosure for a review of conviction information

- 117.** This type of request is not the same as a dispute. In cases where a standard disclosure, an enhanced disclosure or a PVG scheme record contains information about a spent conviction for an offence in schedule 8B of the 1997 Act, which has not yet become a protected conviction, or a spent conviction for an offence in schedule 8A which meets the required criteria,²⁷ an opportunity will be offered to the individual to inform Disclosure Scotland of an intention to make an application to a sheriff for an order for the removal of that information from their disclosure. The individual has 10 working days from the date of issue

²⁷ The criteria are: the conviction is listed in schedule 8A; the conviction is spent; and either 15 years (if aged 18 or over at the date of conviction), or 7 years and 6 months (if under 18 years of age at the date of conviction) have passed.

of the disclosure to inform Disclosure Scotland of that intention. The countersignatory's copy of the disclosure will not be issued during that 10-day period unless the individual advises Disclosure Scotland that they are content for that to happen.

- 118.** Where intimation of the intention to lodge an application to a sheriff is received by Disclosure Scotland within those 10 working days, and where the individual proceeds to lodge the application (which must be done within three months of the disclosure's date of issue), the countersignatory's disclosure will not be issued until the court application is finally determined. After the 10 working days have passed, Disclosure Scotland cannot issue the disclosure to the countersignatory even if the individual changes their mind about lodging an application with a sheriff.
- 119.** If within the three-month period the individual does not lodge an application with a sheriff, Disclosure Scotland will withdraw the application once that period has elapsed. The countersignatory will not receive a disclosure in this case. A new disclosure request would have to be made if the same person was still interested in the same work for the same organisation.
- 120.** Where Disclosure Scotland does not hear from the individual within 10 working days from the date of issue of the disclosure, the countersignatory's copy will be issued as soon as possible after the 11th working day. Disclosure Scotland's website gives more information about how to [apply to have a spent conviction removed from a higher level disclosure](#).

Failure to comply with the obligations in the Code and the Registration Regulations

- 121.** It is important that registered persons and countersignatories are aware that Disclosure Scotland may take action against them if they, or an organisation on whose behalf they have acted, fail to comply with the Code, or the conditions of registration in the Registration Regulations.

- 122.** A failure to comply with the Code could lead to Disclosure Scotland refusing to issue disclosures.
- 123.** Action may also be taken by Disclosure Scotland where a registered person does not comply with the conditions of registration as set out in the Registration Regulations – namely, does not have an active lead signatory in place, or does not pay the annual registration fee on time. Disclosure Scotland may, in these circumstances, suspend the issuing of disclosures, or withdraw invoice facilities (meaning that an alternative means of payment would be required).
- 124.** Disclosure Scotland will not take action to refuse or suspend processing applications or requests without proper investigation and contact with the organisation.
- 125.** Disclosure Scotland will notify the registered person concerned about any refusal or suspension and provide reasons for their decision.
- 126.** Disclosure Scotland may, at the request of the registered person, consider lifting a suspension, but will not do so until it is satisfied that the registered person or countersignatory in question will fully comply with the Code and/or with the conditions of registration. Should Disclosure Scotland decide to lift the suspension, there will be no charge incurred by the organisation other than where it wishes to add additional or replacement countersignatories.
- 127.** In accordance with section 122(4) of the 1997 Act, if a registered person, or someone on whose behalf a registered person has countersigned or is likely to countersign an application for a standard or enhanced disclosure, or has made or is likely to make a declaration in relation to a PVG disclosure request has failed to comply with the Code, Disclosure Scotland may also remove the registered person from the register or impose conditions on that person as regards continued inclusion in the register. Disclosure Scotland will not take action to remove or impose conditions on a registered person without proper investigation and contact with the organisation.

Lost disclosures

128. If a registered person or countersignatory, or any person, to whom the registered person passes disclosure information, loses or otherwise misplaces a disclosure certificate or a disclosure record, the registered person or countersignatory must inform Disclosure Scotland immediately. On request, the registered person must provide full details of the circumstances of the loss. In exceptional circumstances, Disclosure Scotland will consider whether or not it is appropriate to issue a replacement disclosure. The registered person should also advise the subject of the disclosure immediately of the loss in accordance with data protection legislation requirements. There may also be a requirement to notify the Information Commissioner and guidance about that can be found here: [ICO Report Personal Data Breach](#).

129. Loss of disclosure information may be considered to be a breach of the Code.

Disclosure Scotland

130. Disclosure Scotland discharges Scottish Ministers' functions under the 1997 Act and the 2007 Act with regard to the issuing of disclosure information in support of recruitment and appointment decisions, and for certain registration and licensing purposes.

131. The 1997 Act provides for the issue of three types of disclosure certificate: basic disclosure, standard disclosures and enhanced disclosure. The 2007 Act provides for the issue of three types of disclosure records: scheme record, short scheme record, and scheme membership statement. There is more information on the Disclosure Scotland website at: [Types of disclosure available in Scotland](#).

132. Disclosure certificate applications or PVG disclosure requests are initiated by the person who is the subject of the disclosure. This will usually be at the request of employers, voluntary organisations or licensing or regulatory bodies

because they wish to collate as much detail about an individual as possible to use as part of their assessment process. A disclosure application or request can relate to both prospective and existing members of staff (both paid or volunteers).

- 133.** The 2007 Act also requires organisations to satisfy themselves that a person, to whom they intend to offer a regulated work position or role, is not barred from the relevant workforce(s). It is an offence for an organisation to offer regulated work to an individual who they know is barred from the relevant workforce. The only way an organisation can check if an individual is barred is by asking the person to make a disclosure request under the 2007 Act. In order to make a disclosure request under the 2007 Act the individual must apply to join, or already be, a member of the PVG scheme.
- 134.** Neither the 1997 Act nor the 2007 Act place any obligations on a person to make a disclosure application or request if they are asked to do so, however, an organisation should consider the implications of an individual refusing to do so for its own recruitment practices.
- 135.** The use of Disclosure Scotland is not a substitute for the range of existing pre-appointment and ongoing employment checks that employers can/should undertake. The information on a disclosure certificate or record should not be the only factor in an employer's decision to recruit an individual.

Types of disclosure certificates – issued under the 1997 Act

Basic disclosure

- 136.** Any individual can apply for a **basic disclosure** about themselves for any purpose and this will be issued, subject to confirmation of identity and payment of the appropriate fee. The application is not countersigned by a registered person. One certificate is issued. This is normally sent to the individual's home address, however, with the written consent of the individual the certificate can instead be sent to another address, such as a prospective employer. In cases where the

certificate is issued to a prospective employer or an agency acting on its behalf, the certificate should be returned to the subject of the disclosure once it has been used. Copies of the certificate should not be made and/or retained.

137. The basic disclosure contains:

- information about unspent convictions held on central records in the UK or states that there are no such convictions

138. Registered persons may have a role in relation to basic disclosures. It is expected that the registered body will authenticate the identity of the individual and ensure the accuracy of the information prior to submission of the application to Disclosure Scotland.

Standard disclosure

139. **The standard disclosure** is available for positions of employment for which an exempted question can be asked. Those are positions which are excluded and excepted from the effects of the 1974 Act by the 2013 Order and includes jobs such as a solicitor and an accountant.²⁸ The standard disclosure, on payment of the appropriate fee, is available to individuals whose application is countersigned by a registered person. In addition to the certificate being issued to the individual, and subject to paragraphs 117 to 120 above, Disclosure Scotland also issues a certificate to the person who countersigned the application.

140. Registered persons and countersignatories, who countersign standard disclosure applications for their own purposes, must be satisfied that they are entitled to receive disclosure information by virtue of their entitlement to ask an exempted question.

141. Umbrella bodies must satisfy themselves that the third-party organisations/individuals, on whose behalf they intend to countersign

²⁸ Further information about asking the exempted question is set out in Appendix A.

applications, are entitled to receive disclosure information by virtue of those third-party organisations or individuals being entitled to ask an exempted question.

142. The standard disclosure contains information about:

- unspent convictions for any offence
 - spent convictions for offences listed in [schedule 8A of the 1997 Act unless a sheriff determines otherwise](#)
 - spent convictions for offences listed in [schedule 8B of the 1997 Act where the conviction has not yet become a 'protected conviction'](#)
 - unspent cautions for any offence
- held on central records in the UK or states there are no such matters; and
- whether the individual is included on the sex offenders register

Enhanced disclosure

143. The **enhanced disclosure** is available when an exempted question is being asked for a prescribed purpose, which are set out in regulations 9, 10 and 12 of the Criminal Records Regulations. The enhanced disclosure, on payment of the appropriate fee, is available to individuals whose application is countersigned by a registered person or countersignatory, and who must be satisfied that they are entitled to receive disclosure information by virtue of their being entitled to ask an exempted question under the 1974 Act for a prescribed purpose in the Criminal Records Regulations. These prescribed purposes include checking whether someone is a suitable person to adopt a child, and certain gaming and lottery licences. In addition to the certificate being issued to the individual, and subject to paragraphs 117 to 120 above, Disclosure Scotland also issues a certificate to the person who countersigned the application.

144. Umbrella bodies must satisfy themselves that the third-party organisations/individuals on whose behalf they intend to countersign applications are entitled to receive disclosure information by virtue of those

organisations or individuals being entitled to ask an exempted question under the 1974 Act for a prescribed purpose in the Criminal Records Regulations.

145. The enhanced disclosure contains information about:

- unspent convictions for any offence
- spent convictions for offences listed in [schedule 8A of the 1997 Act unless a sheriff determines otherwise](#)
- spent convictions for offences listed in [schedule 8B of the 1997 Act where the conviction has not yet become a 'protected conviction'](#)
- unspent cautions for any offence

held on central records in the UK or states there are no such matters; and

- whether the individual is included on the sex offenders register
- other relevant information, which may include non-conviction information provided by relevant police forces
- (and in some cases, as explained in paragraph 146 below), information about inclusion on barred lists and prescribed civil orders

146. Where an exempted question is being asked for one of the purposes set out in either of regulations 10 and 12 of the Criminal Records Regulations, and where the enhanced disclosure is accompanied by a suitability information statement relating to children (section 113CA of the 1997 Act) or protected adults (section 113CB of the 1997 Act), the corresponding barred lists across the UK will be checked. The enhanced disclosure certificate will state whether or not the individual is barred from the type(s) of regulated work to which the disclosure relates; and, if relevant, whether or not the individual is under consideration for listing in the PVG children's list or adults' list by the Scottish Ministers. It is not an offence to employ a barred individual in a role for which an enhanced disclosure with suitability information has been requested as such a role is not regulated work. The recruiting organisation can, however, use that information as part of its assessment of whether the individual is suitable for the role being offered.

147. The following civil orders can be disclosed on an enhanced disclosure with suitability information²⁹:

- a sexual offences prevention order (or interim order) under the Sexual Offences Act 2003 ('the 2003 Act')
- a foreign travel order under the 2003 Act
- a risk of sexual harm order (or interim order) under the 2003 Act
- a notification order (or interim order) under the 2003 Act
- a sexual harm prevention order under the 2003 Act or under the Sentencing Code³⁰
- an interim sexual harm prevention order under the 2003 Act
- a sexual risk order (or interim order) under the 2003 Act
- a risk of sexual harm order (or interim order) under the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

Types of disclosure records – issued under the 2007 Act

148. Applications or requests under the 2007 Act must relate to regulated work with children and/or adults within the meaning of section 91 of the 2007 Act. In terms of the 2013 Order,³¹ an exempted question can be asked about a person doing, or seeking to do, regulated work under the 2007 Act.

149. Registered persons or countersignatories who make declarations in relation to disclosure requests for a scheme record or a short scheme record for their own purposes, must be satisfied that they are entitled to ask an exempted question under the 1974 Act and receive disclosure information by virtue of them satisfying all of the disclosure conditions set out in section 55 of the 2007 Act.

150. Umbrella bodies, must satisfy themselves that the third-party organisations/individuals on whose behalf they intend to make declarations in relation to disclosure requests for scheme records or short scheme records are

²⁹ See the [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Vetting Information\) Regulations 2010](#) (SSI 2010 No. 189).

³⁰ The Sentencing Code is set out in Parts 2 to 13 of the [Sentencing Act 2020](#) which came into force on 1 December 2020.

³¹ Regulation 5 and Part 2 of Schedule 4, paragraphs 11 and 25 to the [2013 Order](#).

entitled to ask an exempted question under the 1974 Act, and are entitled to receive disclosure information by virtue of those third-party organisations/individuals satisfying the disclosure conditions A to C, as set out in section 55 of the 2007 Act.

- 151.** In cases where a scheme record does not contain vetting information or information that the scheme member is under consideration for listing, Disclosure Scotland will send an electronic scheme record to the countersignatory, and a paper disclosure to the scheme member. In cases where only information that the scheme member is under consideration for listing is to be disclosed, a disclosure will be sent at the same time to the scheme member and the countersignatory. In cases where only vetting information is to be disclosed, the rules at paragraphs 117 to 120 above will be applied. These rules mean that a disclosure will be sent to the scheme member and that a disclosure may not be sent to the countersignatory. In cases where vetting information and information that the scheme member is under consideration for listing is to be disclosed, the rules at paragraphs 117 to 120 above will be applied. Again, these rules mean that a disclosure may not be sent to the countersignatory.

Scheme record

- 152.** The scheme record shows basic membership information:
- the type(s) of regulated work in respect of which the individual is a PVG scheme member (thereby confirming that the individual is not barred from regulated work of that type)
 - if the individual is under consideration for listing for the type(s) of regulated work, states that fact
- 153.** The scheme record also includes any vetting information that exists in relation to the individual. Vetting information is:
- unspent convictions for any offence

- spent convictions for offences listed in [schedule 8A of the 1997 Act unless a sheriff determines otherwise](#)
 - spent convictions for offences listed in [schedule 8B of the 1997 Act where the conviction has not yet become a 'protected conviction'](#)
 - unspent cautions for any offence
- held on central records in the UK or states there are no such matters; and
- whether the individual is included on the sex offenders register
 - other relevant information, which may include non-conviction information provided by relevant police forces
 - prescribed civil orders³²

154. The scheme record also includes the following information:

- the name, address, date of birth and PVG scheme membership number of the individual
- the unique number of the scheme record
- the name and address of the registered person and countersignatory details (on the copy for the registered person and any regulatory body)
- where applicable, the name and address of the regulatory body and registration number (on any copy for a regulatory body only)

Subject to paragraphs 117 to 120 above, the scheme record will be issued to the countersignatory at the same time as issued to the applicant.

Short scheme record

155. The short scheme record is designed for use by organisations when recruiting an individual, who is already a PVG scheme member (and who has had a scheme record issued to them in the past for the same regulated workforce to which the short scheme record relates) to do regulated work for them. The organisation countersigning requests for short scheme records must be a registered person or must use an umbrella body.

³² These are: a sexual offences prevention order (or interim order) under the Sexual Offences Act 2003 ('the 2003 Act'); a foreign travel order under the 2003 Act; a risk of sexual harm order (or interim order) under the 2003 Act; a notification order (or interim order) under the 2003 Act; and a risk of sexual harm order (or interim order) under the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.

156. A short scheme record will only be issued if the scheme member's scheme record **does not** contain vetting information, and that fact will be stated on the disclosure record issued. In cases where a short scheme record is requested, and the scheme member's scheme record does contain vetting information, Disclosure Scotland will treat the request as if it was a request for disclosure of a scheme record. There is no additional fee to be paid to Disclosure Scotland when an application is treated in this way.

157. The short scheme record shows basic membership information:

- the type(s) of regulated work in respect of which the individual is a PVG scheme member (thereby confirming that the individual is not barred from regulated work of that type)
- if the individual is under consideration for listing for the type(s) of regulated work, states that fact

158. The short scheme record also includes the following information:

- the name, address, date of birth and PVG scheme membership number of the individual
- the unique number of the short scheme record
- the name and address of the registered person and countersignatory details

Scheme membership statement

159. The scheme membership statement is designed primarily for use by personal employers asking a self-employed individual to do regulated work for them, or for pre-emptive use by self-employed individuals who intend to do regulated work at some point in the future. As it is for sharing with personal employers, it does not contain vetting information. Registered persons, countersignatories, or third-party organisations who can ask the exempted question should not normally request this type of disclosure record because it does not contain all

the information to which they are entitled. However, they are not prohibited from doing so.³³

160. The scheme membership statement shows basic membership information:

- the type(s) of regulated work in respect of which the individual is a PVG scheme member (thereby confirming that the individual is not barred from regulated work of that type)
- if the individual is under consideration for listing for the type(s) of regulated work, states that fact

161. The scheme membership statement also includes the following information:

- the name, address, date of birth and PVG scheme membership number of the individual
- the unique number of the scheme membership statement
- the name and address of the personal employer on the personal employer's copy (if applicable)

³³ A self-employed person may also be entitled to access a scheme record or short scheme record if, for example, they are employed by an organisation for work under a contract (for example: under a contract of service or apprenticeship or under a contract for services).

Appendix A of the Annex

Rehabilitation of Offenders Act 1974

1. The aim of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”) is to improve the employment prospects of people who have been convicted of a criminal offence and who have served their sentence. Under the terms of the 1974 Act, anyone who has been convicted of a criminal offence and sentenced to 48 months or less in prison can treat their conviction as spent after a specified disclosure period. The disclosure period varies between immediate (a time period of nil days) and six years plus the length of the sentence. The disclosure period for an unspent conviction can be extended if another conviction is accrued (see footnote³⁴).
2. Generally speaking, the 1974 Act provides that when a person is asked about their criminal record history they are allowed to treat that question as not referring to a spent conviction, and the person cannot be prejudiced if the spent conviction later comes to light. As noted above, the 1974 Act does not apply to any prison sentence exceeding 48 months because such convictions cannot become spent under that Act. A conviction that cannot become spent will therefore always be disclosed by Disclosure Scotland on any type of disclosure.
3. There are some exclusions and exceptions to this general rule and some categories of employment not covered by the protection provided by the 1974 Act. The current legislation dealing with the exclusions from section 4(2)(a) or (b) of the 1974 Act and the exceptions from section 4(3) of the 1974 Act is the 2013 Order as amended.³⁵

³⁴ The disclosure period for an unspent conviction can be extended if during that disclosure period a person is: prosecuted on indictment in solemn proceedings (that is, the case is in a Sheriff Court with a sheriff and jury, or in the High Court); convicted; and receives a sentence that is capable of becoming spent. There is more information about this rule on page 36, section 20 of: [Guidance: self-disclosure of previous convictions and alternatives to prosecution](#).

³⁵ The [2013 Order](#) has been relevantly amended by:

- the [Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) \(Scotland\) Amendment Order 2015](#) (SSI 2015 No. 329)

4. When the 1997 Act refers to asking an “exempted question”, it means asking a question about previous convictions that **can** be treated as also including spent convictions for certain offences (those offences are listed in schedule 8A of the 1997 Act/schedule A1 of the 2013 Order), if:
- the individual was **under the age of 18** at the date of conviction, and 7 years and 6 months have not passed since the date of conviction, or
 - the individual was **aged 18 or over** at the date of conviction, and 15 years have not passed since the date of conviction
5. The 2007 Act does not explicitly refer to asking “exempted questions”, however, it does refer to asking questions of a person about previous convictions for the purpose of considering that person’s suitability to do regulated work. Undertaking regulated work with children and/or adults is specifically excluded from the protections provided by the 1974 Act under the 2013 Order. This means that the person being asked such a question must treat it as though it also includes spent convictions for certain offences (those offences are listed in schedule 8A of the 1997 Act/schedule A1 of the 2013 Order), if:
- the individual was **under the age of 18** at the date of conviction, and 7 years and 6 months have not passed since the date of conviction, or
 - the individual was **aged 18 or over** at the date of conviction, and 15 years have not passed since the date of conviction

• the [Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) \(Scotland\) Amendment Order 2016](#) (SSI 2016 No. 91)

• the [Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) \(Scotland\) Amendment Order 2018](#) (SSI 2018 No. 51)

Appendix B of the Annex

The Police Act 1997 – offences

Note: this appendix sets out the offences in sections 123 and 124 of the 1997 Act. The sections have been annotated for the purposes of this guidance and for ease of reference. If further advice is needed about these offences, it is recommended that employers and registered persons seek this from a legally qualified professional.

Section 124 of the 1997 Act:

- (1) A member, officer or employee of a body registered under section 120 [of the 1997 Act] commits an offence if they disclose information provided following an application under section 113A or 113B [of the 1997 Act] unless they disclose it, in the course of their duties—
 - (a) to another member, officer or employee of the registered body,
 - (b) to a member, officer or employee of a body, at the request of which the registered body countersigned the application, or
 - (c) to an individual, at whose request the registered body countersigned the relevant application.

- (2) Where information is provided under section 113A or 113B [of the 1997 Act] following an application countersigned at the request of a body which is not registered under section 120 [of the 1997 Act], a member, officer or employee of the body commits an offence if they disclose the information unless they disclose it, in the course of their duties, to another member, officer or employee of that body.

- (3) Where information is provided under section 113A or 113B [of the 1997 Act] following an application countersigned by or at the request of an individual—
 - (a) the individual commits an offence if they disclose the information unless they disclose it to an employee of theirs for the purpose of the employee's duties, and

- (b) an employee of the individual commits an offence if they disclose the information unless they disclose it, in the course of their duties, to another employee of the individual.
- (4) Where information provided under section 113A or 113B [of the 1997 Act] is disclosed to a person and the disclosure—
- (a) is an offence under this section, or
 - (b) would be an offence under this section but for subsection (5) or (6)(a), (d), (e) or (f),
- the person to whom the information is disclosed commits an offence (subject to subsections (5) and (6)) if they disclose it to any other person.
- (5) Subsections (1) to (4) do not apply to a disclosure of information provided in accordance with section 113B(5) which is made with the written consent of the chief officer who provided the information.
- (6) Subsections (1) to (4) do not apply to a disclosure of information contained in a certificate under section 113A or 113B [of the 1997 Act] which is made—
- (a) with the written consent of the applicant for the certificate, or
 - (b) to a government department, or
 - (c) to a person appointed to an office by virtue of any enactment, or
 - (d) in accordance with an obligation to provide information under or by virtue of any enactment, or
 - (e) for the purposes of answering an exempted question (within the meaning of section 113A [of the 1997 Act]) of a kind specified in regulations made by the Secretary of State, or
 - (f) for some other purpose specified in regulations made by the Secretary of State.
- (7) A person who is guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 3 on the standard scale, or to both.

Section 123 of the 1997 Act

- (1)** A person commits an offence if, with intent to deceive, they–

 - (a) make a false certificate under Part V of the 1997 Act,
 - (b) alter a certificate under Part V of the 1997 Act,
 - (c) use a certificate under Part V of the 1997 Act which relates to another person in a way which suggests that it relates to them, or
 - (d) allow a certificate under Part V of the 1997 Act which relates to them to be used by another person in a way which suggests that it relates to that other person.

- (2)** A person commits an offence if they knowingly make a false statement for the purposes of obtaining, or enabling another person to obtain, a certificate under Part V of the 1997 Act.

- (3)** A person who is guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

Appendix C of the Annex

The Protection of Vulnerable Groups (Scotland) Act 2007 – offences

Note: this appendix sets out the offences and penalties contained in sections 9, 34, 35, 36, 37, 65, 66, 67 and 69 of the 2007 Act. The sections have been annotated for the purposes of this guidance and for ease of reference. If further advice is needed about these offences, it is recommended that employers and registered persons seek this from a legally qualified professional.

Section 9 of the 2007 Act

An organisation which fails, without reasonable excuse, to comply with a duty imposed by any of sections 3 to 5 [that is, a duty to make a referral following dismissal or permanent transfer of an individual from regulated work because of disciplinary action taken as a result of a referral ground in section 2 of the PVG Act being met] within three months of the date on which the duty arose is guilty of an offence and liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both,
- (b) on a conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

Section 34 of the 2007 Act

- (1) It is an offence for an individual to do, or to seek or agree to do, any regulated work from which the individual is barred.
- (2) It is a defence for an individual charged with an offence under subsection (1) to prove that the individual did not know, and could not reasonably be expected to have known—
 - (a) that the individual was barred from that regulated work, or
 - (b) that the work concerned was regulated work.

Section 35 of the 2007 Act

- (1)** It is an offence for an organisation to offer regulated work to an individual barred from that work.
- (2)** Ministers may, by regulations, prohibit an organisation from permitting an individual to do, or require an organisation to remove an individual from, regulated work from which the individual is barred.
- (3)** Regulations may in particular—
 - (a)** impose prohibitions or requirements—
 - (i)** in relation to particular types of organisations only,
 - (ii)** in relation to particular kinds of regulated work only, or
 - (b)** otherwise limit the purpose for which the prohibition or requirement is to apply (or the area in which it is to apply) in such manner as Ministers think appropriate.
- (4)** An organisation which fails to comply with regulations made under subsection (2) commits an offence.
- (5)** An organisation commits an offence under subsection (1) if it offers regulated work to a barred individual who is already working for the organisation.
- (6)** It is a defence for an organisation charged with an offence under subsection (1) or (4) to prove that it did not know, and could not reasonably be expected to have known, that the individual was barred from doing that regulated work.
- (7)** For the purposes of subsection (1), an organisation is not to be treated as having offered regulated work to an individual if the offer is subject to the organisation being satisfied (by virtue of information disclosed under Part 2 [of the 2007 Act] or otherwise) that the individual is suitable to do that work.

Section 36 of the 2007 Act

- (1) A personnel supplier commits an offence if it—
- (a) offers or supplies an individual who is barred from doing regulated work to an organisation, and
 - (b) knows or has reason to believe that the organisation will make arrangements for the individual to do regulated work from which the individual is barred.
- (2) It is a defence for a personnel supplier charged with an offence under subsection (1) to prove that it did not know, and could not reasonably be expected to have known, that the individual was barred from doing the regulated work.

Section 37 of the 2007 Act

A person guilty of an offence under section 34, 35 or 36 [of the 2007 Act] is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

Section 65 of the 2007 Act

- (1) It is an offence for a person, with intent to deceive, to—
- (a) make a document which purports to be a disclosure record,
 - (b) alter a disclosure record,
 - (c) use, or allow another person to use, a disclosure record in a way which suggests that it relates to an individual other than the scheme member in respect of whom it was disclosed.
- (2) It is an offence for a person to knowingly make a false or misleading declaration or other statement for the purposes of—
- (a) obtaining, or enabling another person to obtain, a disclosure record, or

- (b) satisfying Ministers that an individual who is doing regulated work is not doing so.

Section 66 of the 2007 Act

- (1)** A person to whom disclosure information is disclosed under section 51, 52, 53 or 54 [of the 2007 Act] commits an offence if the person discloses it to any other person.

- (2)** A person does not commit an offence under subsection (1) by disclosing the disclosure information—
 - (a) to any of the person's employees,
 - (b) where the person is not an individual, to any member or officer of the person, or
 - (c) where the disclosure was made for the purpose of enabling or assisting another person to consider a scheme member's suitability to do, or to be offered or supplied for, regulated work—
 - (i) to that other person,
 - (ii) to any of that other person's employees, or
 - (iii) where that other person is not an individual, to any member or officer of that other person.

- (3)** An individual to whom disclosure information is disclosed lawfully by virtue of subsection (2)(a) or (b) or (4)(a) commits an offence if the individual discloses it to any other person.

- (4)** An individual does not commit an offence under subsection (3) by disclosing the disclosure information, in the course of the individual's duties—
 - (a) to any other individual who is a member, officer or employee of the person to whom the corresponding disclosure was made under section 52, 53 or 54, [of the 2007 Act] or

- (b) where the disclosure was made for the purpose of enabling or assisting another person to consider a scheme member's suitability to do, or to be offered or supplied for, regulated work—
 - (i) to that other person,
 - (ii) to any of that other person's employees, or
 - (iii) where that other person is not an individual, to any member or officer of that other person.

- (5) A person to whom disclosure information is disclosed lawfully by virtue of subsection (2)(c)(i) or (4)(b)(i) commits an offence if the person discloses it to any other person.

- (6) A person does not commit an offence under subsection (5) by disclosing the disclosure information—
 - (a) to any of the person's employees, or
 - (b) where the person is not an individual, to any member or officer of the person.

- (7) An individual to whom disclosure information is disclosed lawfully by virtue of subsection (2)(c)(ii) or (iii), (4)(b)(ii) or (iii) or (6) commits an offence if the person discloses it to any other person.

- (8) An individual does not commit an offence under subsection (7) by disclosing the disclosure information, in the course of the individual's duties, to any other individual who is a member, officer or employee of the person for whose purposes the corresponding disclosure was made under section 52, 53 or 54 [of the 2007 Act].

- (9) A person to whom disclosure information is disclosed unlawfully commits an offence if the person discloses it to any other person.

Section 67 of the 2007 Act

- (1) It is an offence to request provision of, or to otherwise seek sight of, a disclosure record for a purpose other than the permitted purpose.
- (2) It is an offence to use disclosure information for a purpose other than the permitted purpose.
- (3) The permitted purpose is to enable or assist a person ("Z") to consider the suitability of the individual to whom the record or information relates—
 - (a) to do, or to be offered or supplied for, the type of regulated work to which the disclosure record relates, or
 - (b) to do that type of regulated work in prescribed circumstances for any person other than Z in pursuance of arrangements under which services are provided to Z.
- (4) References in subsection (1) to disclosure records do not include references to information included in disclosure records.

Section 69 of the 2007 Act

A person guilty of an offence under section 65, 66 or 67 [of the 2007 Act] is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

Appendix D of the Annex

The meaning of ‘protected conviction’ as set out in section 126ZA of the 1997 Act

- (1) For the purposes of Part V of the 1997 Act a conviction is a ‘protected conviction’ if—
- (a) it is a spent conviction, and
 - (b) either—
 - (i) it is not a conviction for an offence listed in schedule 8A or 8B (of the 1997 Act)³⁶, or
 - (ii) it is a conviction for an offence listed in schedule 8B and at least one of the conditions specified in subsection (2) is satisfied.
- (2) The conditions are—
- (a) the disposal in respect of the conviction was an admonition or an absolute discharge,
 - (b) the person was aged under 18 on the date of conviction and at least 7 years and 6 months have passed since the date of the conviction,
 - (c) the person was aged 18 or over on the date of conviction and at least 15 years have passed since the date of the conviction.
- (3) In subsection (2)(a), the reference above to an absolute discharge includes a reference to the discharge of the referral of a child’s case to a children’s hearing under—
- (a) section 69(1)(b) and (12) of the Children (Scotland) Act 1995, or
 - (b) section 91(3)(b), 93(2)(b), 108(3)(b), or 119(3)(b) of the Children’s Hearings (Scotland) Act 2011.

³⁶ Schedules 8A and 8B were inserted into the 1997 Act by Article 3(8) of [the Police Act 1997 and the Protection of Vulnerable Groups \(Scotland\) Act 2007 Remedial \(No. 2\) Order 2015](#) (SSI 2015 No. 423).

Appendix E of the Annex

Voluntary Organisations and Qualifying Voluntary Organisations

1. Any voluntary organisation including any Qualifying Voluntary Organisation ('QVO') that comes within the definition in the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 (SSI 2010 No. 167) ('the 2010 Regulations') can register directly with Disclosure Scotland instead of using the services of Volunteer Scotland Disclosure Services ('VSDS'). In cases where the voluntary organisation or qualifying voluntary organisation wishes to be a registered body in its own right, that organisation is subject to the Registration Regulations and the Code in the same way as all other registered bodies. That includes the need to pay the annual subscription fee for registration. QVOs can enrol with VSDS free of charge and do not pay an annual subscription fee.
2. With regard to the fees for PVG applications and requests, section 70 of the Protection of Vulnerable Groups (Scotland) Act 2007 ('the 2007 Act') gives the Scottish Ministers the power to charge fees in a wide range of circumstances in relation to the PVG scheme disclosure applications and requests, and to waive or refund fees in prescribed circumstances.
3. The fees charged are prescribed in the 2010 Regulations as amended. The 2010 Regulations provided that the fees are to be waived for volunteers doing unpaid and voluntary work for a QVO as defined in regulation 7(2) and 7(3) of the 2010 Regulations extracted below in paragraph 4.
4. 7(2) In this regulation—
"qualifying voluntary organisation" means an organisation which is not—
 - (a) a further education institution, a school, a public or local authority, or under the management of a public or local authority; and

- (b) conducted primarily for profit, and any profit generated is used to further the objectives of the organisation and not distributed to its members.

7(3) For the purposes of the definition of “qualifying voluntary organisation” in paragraph (2)—

“further education institution” has the same meaning as in paragraph 15 of schedule 2 to the 2007 Act; and

“school” has the same meaning as in the Education (Scotland) Act 1980 but does not include a school that solely provides early learning and childcare within the meaning of Part 6 of the Children and Young People (Scotland) Act 2014.

5. In cases where a QVO wishes to register directly with Disclosure Scotland, it must also be separately authorised by Disclosure Scotland to submit checks for volunteers for which the fee may be waived. It must ensure that any PVG applications or request subsequently made are only for volunteers doing unpaid and voluntary regulated work. This authorisation is also required in cases where an umbrella body registered with Disclosure Scotland wishes to submit checks for a QVO on behalf of volunteers for which the fee may be waived.
6. A registered body seeking authorisation as a QVO or to act on behalf of a QVO must submit an authorisation request in writing to Disclosure Scotland via: response@disclosurescotland.gov.scot, supplying evidence that their organisation (or those they act on behalf of) meet the definition of a QVO. That evidence may include provision of the organisation’s articles of association, management structure and latest available audited annual report or accounts. The organisation must also comply with any request for further information or supporting documentation.
7. PVG applications and requests submitted by QVOs, or umbrella bodies acting on behalf of QVOs, requesting a waiver of the fee may be subject to further scrutiny by Disclosure Scotland. Inappropriate requests for a fee waiver may be subject to further action.