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PVG Scheme Scotland

The PVG Scheme - Scotland

Children & Adults (below)

CHILDREN

Introduction

Regulated work with children is defined at schedule 2 of the PVG Act. This schedule was amended in the summer of 2010 and the amended version can be found at Annex A. The definitive reference point for regulated work with children is schedule 2 of the PVG Act (as amended) and this should be consulted in case of doubt. Schedule 2 was based on the definition of “child care position” in schedule 2 of POCSA but with a number of improvements, including clearer presentation and the introduction of the incidental test. It is important to note that by no means all individuals who come into contact with children through their work are doing regulated work with children.

This section focuses on work which may be within scope of regulated work with children:

- (a) a position whose normal duties include carrying out particular activities;
- (b) a position whose normal duties include work in particular establishments;
- (c) particular positions of trust or responsibility; or
- (d) a position whose normal duties include the day to day supervision or management of an individual doing regulated work with children by virtue of the activities the individual carries out or work the individual does in establishments.

It is important to read section 2.6 about normal duties and section 2.7 to see whether any of the exceptions apply. Note that normal duties qualifies: work carrying out activities; work in establishments; and day-to-day supervision or management of an individual carrying out those activities or working in those establishments. But it does not qualify the particular positions of trust and

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responsibility – an individual who works in one of those positions will always be doing regulated work. Where there are exceptions which apply to the type of work listed below, these are referenced by numbers in square brackets and further explanation can be found in section 2.7.

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Activities

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

- Caring for children.
- Teaching, instructing, training or supervising children.
- Being in sole charge of children (see below).
- Unsupervised contact with children under arrangements made by a responsible person (see below)
- Providing advice or guidance to a child or to particular children which relates to physical or emotional well-being, education or training (see below).
- Moderating a public electronic interactive communication service which is intended for use wholly or mainly by children (see below).
- Providing, or working for an organisation which provides, a care home service which is provided exclusively or mainly for children.
- Providing, or working for an organisation which provides, an independent health care service which is provided exclusively or mainly for children.
- Work on any part of day care premises at times when children are being looked after in that part.

Being in sole charge of children

Being in sole charge of children might include, for example: a contracted taxi or minibus driver taking children to school classes; the operator of a bouncy castle,

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where parents may be absent and the individual does have charge of what happens on the castle. It may also capture some aspects of school trips where a helper is not undertaking other kinds of activity which qualify as regulated work, for example escorting a group of children between venues.

Unsupervised contact with children

Unsupervised contact with children under arrangements made by a responsible person is regulated work with children.

The PVG Act defines “unsupervised contact with children” to mean contact with children in the absence of:

- (a.) a responsible person;
- (b.) a person doing regulated work with children by virtue of caring, teaching, instructing, training, supervising or being in sole charge of children; or
- (c.) an individual who, in relation to a child, has agreed to supervise the contact under arrangements made by the child’s parent or guardian or any person aged 18 or over with whom the child lives in the course of a family or personal relationship.

The PVG Act defines “responsible person” to mean, in relation to a child, any of the following persons:

- (a.) the child’s parent or guardian;
- (b.) any person aged 18 or over with whom the child lives;
- (c.) the person in charge of any establishment in which the child is accommodated, is a patient or receives education (and any person acting on behalf of such a person);
- (d.) a person who provides day care of children, within the meaning of section 2 of the 2001 Act;
- (e.) any person holding a particular position of trust and responsibility; and
- (f.) a charity trustee of a children’s charity.

Family relationship and personal relationship have the same meanings as in section 95 (meaning of "work").

Note that any contact with the child which is supervised by a person who has agreed to do so with the child’s parent, guardian or any other adult with whom the child lives is not unsupervised contact. The parent, guardian or adult resident must have agreed to the supervision of the contact by the friend or relative.

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For example, suppose a voluntary organisation organises a pantomime trip by coach involving the organiser, adult A and the coach driver, adult B. If 30 children come along, 28 accompanied by a parent but two come unaccompanied, the provision referred to in paragraph 32(c) means that where the parents of those two children to agree to nominate another person (perhaps another parent on the trip) to supervise their children in respect of contact with adults A and B that contact would not be unsupervised. This provision puts beyond doubt that no-one on the trip is doing regulated work with children, so long as each child is supervised either by a responsible person or by someone nominated by the responsible person for that child.

The meaning of “agreed” in the preceding example does not require such agreement to be in writing, but any organisation not requiring PVG Scheme membership on the basis of such agreement should make a contemporary record of it.

Providing advice or guidance to children

38. Providing advice or guidance to children covers positions such as workers on telephone advice lines and children’s magazine agony aunts. The provision does not cover general broadcasting to children, such as children’s television or radio programmes. Advice or guidance in relation to spiritual matters or spiritual well-being is considered to be captured by advice on emotional well-being and so is within the scope of this provision.

Moderating a public interactive communication service

The PVG Act states that a person moderates such a service if, for the purpose of protecting children, the person has any function relating to:

- (a) monitoring the content of matter which forms any part of the service
- (b) removing matter from, or preventing the addition of matter to, the service, or
- (c) controlling access to, or use of, the service.

But a person only moderates such a service as mentioned in sub-paragraph (b) or (c) if the person has:

- (i) access to the content of the matter, or
- (ii) contact with users of the service.

This covers positions such as those involved in moderating Internet chat rooms intended for use by children where the individual has a role in protecting those children from harm. It does not cover incidental use by children of chat rooms intended for use by adults. It does not cover staff involved in maintaining and supporting such services whose function is not related to child protection, e.g. engineers.

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Being a host parent

Provision in respect of host parenting captures overnight accommodation provided in family homes as part of school exchange programmes and visits, trips or excursions arranged by many voluntary and private organisations. (Note that this does not include foster caring, for which specific provision is made elsewhere .) Host parenting must fall within the definition of work, otherwise it cannot be regulated work (see section 2.2). So the provision applies both to arrangements made by a council, a charity or other organisation and to private hosting arrangements where this is for commercial consideration (that is, those made directly between the parent of the child and the host parent where this is not within the context of a family or personal relationship). But the provision does not apply to any arrangements made in the course of a family relationship (whether or not a payment is made) or in the course of a personal relationship for no commercial consideration, for example where the child stays over at a friend's house.

To be host parenting, the overnight accommodation has to be provided as if the child were part of that person's family. This excludes any person working in a hotel or B&B providing accommodation for children on a commercial basis on similar terms as they would for other clients.

The offences at sections 35 and 36 of the PVG Act do not apply to host parenting, as they do to other types of regulated work. This means that it is not an offence for an organisation to appoint a barred individual as a host parent but still allows organisations access to disclosure records, effectively making it a local policy decision as to whether or not to require such disclosure records from prospective host parents. Section 34 does still apply which means that it will always be an offence for an individual to work as a host parent if barred from doing regulated work with children. Organisations are still under the same duty to refer individuals who become unsuitable to be host parents as they are in respect of their employees and other workers (see chapter 6).

Individuals aged 16 or over living in the same household as the host parent(s) are not eligible for disclosures under the PVG Scheme but are eligible for enhanced disclosure . In theory, the decision to check these individuals is not contingent upon the decision in respect of checking the host parent(s) but, in practice, there would need to be an extremely strong justification for checking these individuals if the host parent(s) themselves were not required to obtain a disclosure under the PVG Scheme.

In the past, there has been a variation in approach by organisations across Scotland on the checking of host parents, which was justified to the extent that it was a result of applying POCSA (which made no specific reference to host parenting) to the different circumstances of each case.

The PVG Act effectively gives organisations a free hand in determining whether or not to require PVG Scheme membership or disclosure records for host parenting activities. But organisations should exercise their discretion using a risk-based assessment and ensure that the measures are even-handed and fair. Organisations

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should:

- apply coherent criteria to all potential host parents in the same way (i.e. not just require checks of only some parents who appear to be less suitable than others);
 - identify those criteria in advance and share them with potential host parents;
 - pay heed to any guidance or directions issued by relevant local bodies, such as local authorities; and
- have regard to how other similar organisations manage similar host parenting activities.

Factors that organisations may wish to consider in determining whether to require PVG scheme membership for host parents include:

- the duration of the stay;
 - whether the children have the opportunity to meet responsible adults other than the host parents on a daily basis (i.e. the opportunity to report concerns about the host parent to another responsible adult);
 - the views of the “sending” organisation / parents of the children; and
- the age and vulnerability of the children.

Organisations should be careful about assuming that just because an individual has children of their own or has done host parenting before that these factors alone make them suitable to do host parenting.

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Establishments

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

- An institution which is exclusively or mainly for the detention of children.
- A hospital which is exclusively or mainly for the reception and treatment of children.
- A school.
- A further education institution.
- A hostel used mainly by pupils attending a school or further education institution.
- A home which is exclusively or mainly for children and is provided by a council under social work or mental health legislation .

One exception applies to positions in all these establishments, namely that such positions are not regulated work unless doing anything permitted or required in connection with the position gives the person the opportunity to have unsupervised contact with children. This is explained in section 2.7.

Positions

An individual is doing regulated work with children if they hold any of the following positions (note there is no normal duty qualification or other exceptions which

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apply):

- Manager, or member of a governing body, body of trustees or other body responsible for the management, of a school, further education institution or hostel – as defined in establishments (but not a member of a council).
 - Member of certain council committees, joint committees or sub-committees concerned with the provision of education, accommodation, social services or health care services to children.
 - Member of a children's panel or certain related committees.
 - Chief social work officer of a council.
 - Chief education officer (however called) of a council.
 - Commissioner for Children and Young People in Scotland or member of that Commissioner's staff.
 - Registrar of Independent Schools in Scotland
 - Foster carer.
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- Charity trustee of a children's charity (see below).

These positions cover work which might not otherwise be regulated work. These are positions which, by their very nature, put the post-holder in a position of power and trust in respect of children and those who work with children and could enable the post-holder to demand access to children. Additionally, some of these positions give

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the post-holder the power to influence or determine recruitment decisions or organisational policy and practice. A post-holder in one of these positions is doing regulated work with children without exception (i.e. there is no normal duties test and it is immaterial whether or not the post-holder is or is not covered by any other provision).

Charity trustee

All trustees of children's charities are doing regulated work. The PVG Act defines a children's charity as a charity whose:

(a.) main purpose is to provide benefits for children, and

(b.) principal means of delivery of those benefits is by its workers doing regulated work with children.

An individual works for a charity if the individual works under any arrangements made by the charity.

The main purpose of including "children's charity" trustees within the scope of regulated work is because of the trust and access to children within and beyond the work of the charity itself which that position confers or would be assumed to confer by a lay person.

The definition excludes Higher Education Institutions. It also excludes all charities whose main purposes are aimed at adults or the population more generally. Finally, it excludes charities which deliver "indirect" benefits only, such as financial, legal or medical research. The definition of children's charities covers those charities which would most commonly be thought of as such.

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Day to day supervision or management of workers doing activities or in establishments

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

Individuals at one remove from the front-line, those with day to day supervision or management responsibilities for individuals doing regulated work are in a powerful position to safeguard (or harm) vulnerable groups by guiding or directing those

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individuals in their work.

A position is likely to include day-to-day supervision or management of an individual where:

- the holder of the position is responsible for the management, supervision, appraisal, training and immediate welfare of the individual (but note that responsibility for the recruitment, discipline and dismissal may reside with a dedicated HR department in large organisations);
 - the holder of the position meets regularly with the individual to discuss and review the individual's work;
 - the holder of the position quality assures the individual's work (e.g. by being present on occasion or reviewing outputs); or
- a person more senior than the holder of the position would hold that person responsible for any failing in respect of the individual's work.

Collective responsibility

Collective responsibility for a policy, process or organisation does not necessarily equate to collective responsibility for day-to-day supervision or management of workers. Even where the day-to-day supervision or management of an individual is the collective responsibility of a group, it is not the intention of the PVG Act that all members of the group are themselves doing regulated work and therefore expected to become PVG Scheme members. In such circumstances, it is preferable that one member of the group takes primary responsibility for the day to day supervision or management of the individual, at least in respect of the aspects of their work that are regulated work. It is also important to consider the “day-to-day” element of the test.

For example, a Kirk Session might have collective responsibility for youth work in a church. However, it is unlikely that many members have responsibility for the day-to-day supervision or management of the youth worker. It should be possible to allocate responsibilities such that only one of their number (one might expect this to be the Minister) is doing regulated work by virtue of this function.

ADULTS

Introduction

Schedule 3 of the PVG Act defines regulated work with adults. This schedule was amended in the summer of 2010 and the amended version can be found at Annex B. This definition replaces and expands the definition used for the purposes of eligibility for enhanced disclosure. The criteria for enhanced disclosure for work with adults at risk were that the individual was working in a “position... of a kind which enables [them] in the course of his or her duties to have contact with an adult at risk”.

This section focuses on work which may be within scope of regulated work with adults:

- (a.) a position whose normal duties include carrying out particular activities;
- (b.) a position whose normal duties include work in particular establishments;
- (c.) particular positions of trust or responsibility; or
- (d.) a position whose normal duties include the day to day supervision or management of an individual doing regulated work with adults by virtue of the activities the individual carries out or work the individual does in establishments.

It is important to read section 2.6 about normal duties and section 2.7 to see whether any of the exceptions apply. Note that normal duties qualifies: work carrying out activities; work in establishments; and day-to-day supervision or management of an individual carrying out those activities or working in those establishments. But it does not qualify the particular positions of trust and responsibility - an individual who works in one of those positions will always be doing regulated work. Where there are exceptions which apply to the type of work listed below, these are referenced by numbers in square brackets and further explanation can be found in section 2.7.

Note that having access to financial or medical records or “sensitive” information is not regulated work (although may be eligible for standard disclosure).

Activities

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

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- Caring for protected adults.
- Teaching, instructing, training or supervising protected adults.
- Being in sole charge of protected adults.
- Providing assistance, advice or guidance to a protected adult or particular protected adults which relates to physical or emotional well-being, education or training.
- Inspecting adult care services (including inspecting any premises used for the purposes of providing such services)

Sole charge of protected adults

Remembering that for an individual to be a protected adult, they must be in receipt of a health, care or welfare service, there are only limited circumstances where an individual is likely to be doing regulated work with adults only by virtue of being in sole charge of protected adults. These circumstances are most likely to be community bus or contract taxi services delivered as part of a health, care or welfare service. The drivers of such vehicles, if the protected adult is unaccompanied by a relative or carer, are likely to be in sole charge of protected adults.

Establishments

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

- A care home - meaning accommodation occupied mainly or exclusively by individuals aged 16 or over which is provided by an organisation carrying on a care home service.
- A residential establishment or accommodation occupied exclusively or mainly by individuals aged 16 or over which is provided by, or the provision of which is secured by a council under social work or mental health legislation .

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One exception applies to positions in all these establishments, namely that such positions are not regulated work unless:

- doing anything permitted or required in connection with the position gives the person the opportunity to have unsupervised contact with protected adults; and
- any contact with protected adults, when the holder of the position is doing anything permitted or required in connection with the position, is more than incidental.

This is explained in section 2.7.

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Positions

An individual is doing regulated work with adults if they hold any of the following positions (note there is no normal duty qualification or other exceptions which apply):

- Member of certain council committees, joint committees or sub-committees concerned with the provision of education, accommodation, social services or health care services to protected adults.
- Chief social work officer of a council.
- Charity trustee of certain charities (see below).

Charity trustee

All trustees of certain charities as defined in the PVG Act are doing regulated work with adults. These charities are whose:

(a.) main purpose is to provide benefits for protected adults, and

(b.) principal means of delivery of those benefits is by its workers doing regulated work with adults.

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An individual works for a charity if the individual works under any arrangements made by the charity.

The provision mirrors that for regulated work with children (see section 2.4).

Day to day supervision or management of workers doing activities or in establishments

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

The discussion of day-to-day supervision and management in section 2.4 applies equally here.

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