

Amendment to the Protecting Vulnerable Groups (PVG) Scheme and Self Directed Support (SDS)

The PVG scheme has been in operation in Scotland since February 2011. From this date the self-directed support national guidance 2007 should be amended.

Section 5 paragraphs 86-104 should be replaced with the following text.

Section 5: EMPLOYING STAFF: PERSONAL ASSISTANTS AND CLOSE RELATIVES

Personal assistants

86. The option of employing a personal assistant (PA) can be attractive to some people as the best means of meeting their individual needs.

Whilst it is empowering, and can increase the choice and flexibility of the package, the role of employer carries important tasks and responsibilities. Those who choose this option need advice and assistance to enable them to meet their obligations as employers as well as to get the most from the relationships they build with their staff.

87. It is important that care is taken when recruiting PAs and that individuals know where to get the type of information, training and practical support that they need. This section outlines some best practice that individuals will need to follow if they are to fulfil their employer's role.

Safe recruitment

88. Safe and effective recruitment by PA employers requires commitment by the user, the local authority, the support organisation and others to:

- explore what is best for the individual and how this may be achieved
- put in place all the various recommended stages in the recruitment processes, and
- provide appropriate targeted advice and training on roles and responsibilities.

89. The responsibility for ensuring the quality of support rests with the individual. This is because Social Care and Social Work Improvement Scotland's regulatory system does not cover situations where an individual employs a person directly (i.e. personal assistants), whether or not paid for through self-directed support.

90. The prospect of allowing a non-regulated support worker into their home may seem daunting for some individuals even though they can ask for evidence of PVG Scheme membership. Those thinking of employing a PA can find out a lot from those who have managed to do so successfully.

91. Using safe and effective recruitment and employment processes should also help. This means:

- taking up references, on paper and by telephone
- using the PVG scheme
- staff induction and training
- probationary periods of employment
- local peer support
- staff management including meetings
- staff appraisals, including disciplinary procedures
- obtaining employer’s liability insurance
- obtaining employer’s indemnity cover.

92. The above list does not fully apply where an individual contracts with a self-employed PA, as the PA will be responsible for their own training and liability insurance.

Protecting Vulnerable Groups (PVG) Scheme membership

93. The PVG scheme

[\[http://www.scotland.gov.uk/Publications/2011/07/22142826/5\]](http://www.scotland.gov.uk/Publications/2011/07/22142826/5) is a membership scheme which ensures that people who are barred from working with certain vulnerable groups are not able to do so. Disclosure Scotland will maintain lists of people who are barred from working with children and those who are barred from working with protected adults. It is illegal for a person to undertake regulated work if they are barred from doing so, and illegal for an organisation to employ a barred person. It is not an offence for a personal employer to employ a barred individual to do regulated work, but **it is an offence for a barred individual to do regulated work.**

Duties on direct payment users

94. A personal assistant who is employed by a direct payment recipient to provide them with a welfare service does not have to become a member of the PVG Scheme. The only way, however, that an employer will know that the PA is not barred from regulated work is to ask the PA to join the Scheme and to seek a copy of their Statement of Scheme Membership. The employer will not be able, without the employees consent, to share that disclosure record with the council. As with previous disclosure certificates, however, the individual seeking employment may, at their discretion, share the statement or record. Councils must not, however, insist on this; to do so would be a criminal offence.

Duties on councils

95. Although councils cannot seek access to PVG scheme membership records for personal assistants, they will need to ensure the personal employer understands the importance of scheme membership, the rules on seeking and sharing information, and the risks of employing an unsuitable person. Direct payments must not, however, be refused merely on the grounds that the council does not have access to scheme membership statements.

96. There may be situations where, nevertheless, it is appropriate for a direct payment to be refused but that may only be based on the support plan agreed between the individual and the council. That will be part of the assessment process

and should set out how the key outcomes are to be met. Where a council does not consider that a direct payment, or the way in which it will be used to purchase support, will deliver the agreed outcomes the individual should be advised of the reasons. PVG scheme membership is not, however, evidence that a direct payment is not appropriate but, equally, PVG scheme membership is not proof, in itself, that a direct payment is appropriate.

Managing risk

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

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

Referrals and Personal Employers

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

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

101. Existing advice on PVG is provided in the main guidance on the scheme which can be found at http://www.disclosurescotland.co.uk/pvg_index.html. For further information on disclosure checks please contact Disclosure Scotland or SPAEN (Scottish personal Assistant Employers Network).



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ISBN: 978-1-78045-385-9 (web only)

APS Group Scotland
DPPAS12005 (09/11)

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