

# Code of Practice

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

## 28 February 2011 Edition

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

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E-mail us at [info@disclosurescotland.co.uk](mailto:info@disclosurescotland.co.uk), or

Visit our website at [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk).

The Code of Practice is available from the website.

This Code of Practice (SG/2011/18) was published, laid and came into force on 28 February 2011, being the date that the Protection of Vulnerable Groups (Scotland) Act 2007 was substantively commenced and the Protecting Vulnerable Groups Scheme became operational, and from that date it replaces the Code of Practice laid on 24 July 2007 (SE/2007/149).

**SG/2011/18**

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# Introduction

## Introduction

1. This Code of Practice (“the Code”) is published by the Scottish Ministers under section 122<sup>1</sup> of Part V of the Police Act 1997 (“the 1997 Act”) in connection with the use of disclosure information provided to registered persons and with the discharge of any functions by registered persons under that Act. The Code may be revised from time to time.
2. The Code identifies obligations which registered persons or the nominee of a registered person (called “a countersignatory”) and other recipients of disclosure information require to meet. Failure to comply with the Code may result in Scottish Ministers refusing to issue disclosures. If Scottish Ministers believe that a registered person, a countersignatory or someone on whose behalf a registered person or countersignatory has countersigned an application or made a declaration on a disclosure request has failed to comply with the Code, then they may remove the person from the register or impose conditions on them as regards their continued inclusion in the register.
3. In relation to disclosure information, registered persons and countersignatories must take reasonable steps to ensure that those to whom they pass the information observe the Code. If acting on behalf of others they should evidence what processes are in place to ensure that those they pass information to are adhering to the Code.
4. A registered person signing disclosure applications or requests on behalf of other organisations will therefore need to have some knowledge about the organisation offering a position or regulated work and about the nature of the position or regulated work in question. The registered person acting on behalf of organisations not registered with Disclosure Scotland should also make those organisations aware of the terms of the Code and the consequences of non-compliance with the Code. Registered persons acting on behalf of organisations should seek written assurances from these organisations that they are observing the Code. It will also be reasonable, in some circumstances, for registered persons to visit these organisations to check that the Code is being observed.
5. If the registered person acting on behalf of organisations has reason to believe that such an organisation has failed to comply with the Code, it should immediately report the circumstances to Disclosure Scotland.

## Purpose of the Code of Practice

6. The Code is intended:
  - to ensure that disclosure information released by Disclosure Scotland to registered persons including countersignatories, is used properly and fairly by those persons who are entitled to receive that information;
  - to provide assurance to those individuals either applying for a Standard or an Enhanced Disclosure under the 1997 Act or making a disclosure request under the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”) that disclosure information will be used properly and fairly by persons who are entitled to receive that information; and

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<sup>1</sup> As amended by section 70(7) of the Criminal Justice (Scotland) Act 2003.

- to ensure that disclosure information is handled and stored appropriately and is kept for only as long as necessary for the purpose it was requested and thereafter disposed of securely.

7. The obligations about the use of the disclosure information with which recipients of disclosure information must comply relate to:

- what registered persons and countersignatories who countersign applications or make declarations on disclosure requests must do;
- the fair use of disclosure information;
- the handling of information; and
- assurance and audit.

8. The Code sets out how those in receipt of disclosure information can comply with their obligations in relation to applications under the 1997 Act and to PVG Scheme disclosure requests under the 2007 Act.

### Interpretation of the Code

9. This paragraph sets out the meaning of various words and phrases used in the Code:

“the 1974 Act” means the Rehabilitation of Offenders Act 1974 – Annex A sets out details of the 1974 Act and information about asking exempted questions;

“the 1997 Act” means the Police Act 1997 which makes provision in Part V about criminal records certificates;

“the 2007 Act” means the Protection of Vulnerable Groups (Scotland) Act 2007 which makes provision for disclosures related to regulated work;

“countersignatory” means a person nominated by a body corporate or unincorporate or statutory office-holder 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 certificates issued under section 113A<sup>2</sup> of the 1997 Act (referred to in this Code as “Standard Disclosure”);
- enhanced criminal record certificates issued under section 113B<sup>2</sup> of the 1997 Act (including information provided by the relevant police forces<sup>3</sup> under section 113B(5) of the 1997 Act) (referred to in this Code as “Enhanced Disclosure”);
- scheme records disclosed under section 52 of the 2007 Act (referred to in this Code as “Scheme Record”);

<sup>2</sup> Sections 113 and 115 of the 1997 Act were repealed by section 163(1) of the Serious Organised Crime and Police Act 2005. Section 163(2) of the Serious Organised Crime and Police Act 2005 inserted sections 113A and 113B into the 1997 Act.

<sup>3</sup> “Relevant police force” means those forces prescribed by regulation 8 of the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 (SSI 2010/168).

- short scheme records disclosed under section 53 of the 2007 Act (referred to in this Code as “Scheme Record Update”);

“exempted question” means asking an individual a question about any spent convictions 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;

“lead signatory” means the person who signs the registration application and acts on behalf of a body corporate or unincorporate;

“umbrella body” means a body which is a registered person under section 120 of the 1997 Act and which countersigns disclosure applications for Standard or Enhanced Disclosures or makes declarations in relation to PVG disclosure requests for either a Scheme Record or a Scheme Record Update at the request of organisations or individuals that are not themselves registered with Disclosure Scotland but who are able to ask the exempted question.

### Who must comply with the Code?

**10.** The Code applies in connection with the use of disclosure information which has been provided to a registered person by Disclosure Scotland. Its provisions therefore also apply to all further recipients who are entitled to receive such disclosure information from the registered person. It does not apply to the individual who is the subject of the disclosure information and who also receives the disclosure from Disclosure Scotland. That is to say the following persons must comply with the Code:

- any person registered under section 120<sup>4</sup> of the 1997 Act, including bodies corporate and unincorporate, statutory office holders and umbrella bodies;
- 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 (referred to as “countersignatories”); and
- bodies or individuals in respect of whom a registered person has countersigned an application or made a PVG declaration in relation to disclosure information.

### Disclosure Scotland

**11.** Disclosure Scotland discharge Scottish Ministers’ functions under the 1997 Act and the 2007 Act with regard to the issuing of disclosures in support of recruitment and appointment decisions, and for certain registration and licensing functions.

**12.** The 1997 Act provides for the issue of three certificates: “Basic Disclosure”, “Standard Disclosure” and “Enhanced Disclosure”. The 2007 Act provides for the issue of three disclosure records: “Scheme Record”, “Scheme Record Update” and “Scheme Membership Statement”.

**13.** Disclosure applications or 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 and use disclosure information as part of their assessment process. This can relate to both prospective and existing members of staff.

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<sup>4</sup> As amended by section 70(6) of the Criminal Justice (Scotland) Act 2003 and schedule 4, paragraph 39 of the Protection of Vulnerable Groups (Scotland) Act 2007.

14. The 2007 Act also requires organisations to satisfy themselves that a person to whom they intend to offer a position in regulated work is not barred from the relevant workforce(s). Organisations commit an offence if they offer regulated work to an individual 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.
15. Neither the 1997 Act nor the 2007 Act places an obligation on any person to make a disclosure application or request if they are asked to do so by an employer or other person.
16. The use of Disclosure Scotland is not a substitute for the full range of existing pre-appointment and ongoing employment checks that employers should undertake. In the case of both the 1997 Act and the 2007 Act the information on the certificate or record should not be the only factor in the employer's decision.
17. Disclosures certificates (the 1997 Act) and Scheme Records (the 2007 Act) issued by Disclosure Scotland may include vetting information held in the United Kingdom or they will state that no such information is held.

## Types of Disclosure Certificates – issued under the 1997 Act

### Basic Disclosure

18. **The Basic Disclosure.** Any individual can apply for a Basic Disclosure about themselves and this will be issued to such an individual, 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 will instead be sent to another address, for example, a prospective employer.
19. The Basic Disclosure contains:
  - unspent convictions held on central records in the UK or states that there are no such convictions; and
  - whether the individual is included on the sex offenders register.<sup>5</sup>

### Standard Disclosure

20. **The Standard Disclosure** is available for positions for which an exempted question can be asked. Those are positions which are excluded and excepted from the effects of the 1974 Act by an order made under that Act (further information is set out in Annex A about asking exempted questions). In Scotland the relevant order is the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 (SSI 2003/231) (as amended) (“the 2003 Order”). 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, Disclosure Scotland issues a certificate to the person who countersigned the application.
21. Registered persons 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 exempted questions.

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<sup>5</sup> Inserted by section 78(1) of the 2007 Act. Section 78(1) was not commenced on 28 February 2011. The commencement date for section 78(1) will be published on Disclosure Scotland's website in due course.

22. If acting on behalf of organisations or individuals not registered under section 120 of the 1997 Act, the umbrella body must satisfy themselves that those on whose behalf they intend to countersign applications are entitled to receive disclosure information by virtue of that organisation or person being entitled to ask exempted questions.
23. The Standard Disclosure contains:
- convictions and cautions held on central records in the UK or it states there are no such matters; and
  - whether the individual is included on the sex offenders register.<sup>6</sup>

### Enhanced Disclosure

24. **The Enhanced Disclosure** is available when an exempted question is being asked for a prescribed purpose as set out in regulations 9, 10 and 12 of the Police Act 1997 Criminal Records (Scotland) Regulations 2010 (SSI 2010/168) (“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. In addition to the certificate being issued to the individual, Disclosure Scotland sends a certificate to the person who countersigned the application.
25. Registered persons who countersign Enhanced Disclosure applications 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. Asking an exempted question for a prescribed purpose means asking an exempted question for the purposes of any of the matters or in relation to any of the individuals mentioned in regulations 9, 10 and 12 of the Criminal Records Regulations. Further information about such matters and individuals can be found at: <http://www.legislation.gov.uk/ssi/2010/168/contents/made>. In such cases information about spent convictions can be sought regarding the subject of the check.
26. If acting on behalf of organisations or individuals not registered under section 120 of the 1997 Act, the umbrella body must satisfy themselves that those on whose behalf they intend to countersign applications are entitled to receive disclosure information by virtue of that organisation or person being entitled to ask an exempted question for a prescribed purpose as set out in the Criminal Records Regulations.
27. The Enhanced Disclosure contains:
- convictions and cautions held on central records in the UK or states there are no such matters;
  - 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) information about inclusion on barred lists and prescribed civil orders.
28. The chief officer of a relevant police force may also disclose information directly to the person who countersigned the Enhanced Disclosure application. That information is not included on the face of the certificate, but is still regarded as disclosure information. Such information will be sent separately and must be withheld from the subject of the Enhanced Disclosure. It is likely that the chief officer will forward a letter to the person who countersigned the Enhanced Disclosure application outlining the conditions of this type of disclosure and their expectation of the use that can be made of it. Disclosure Scotland has no access to this information or the content of the letter.

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<sup>6</sup> As inserted by section 78(2)(a) of the 2007 Act.

- 29.** Where an exempted question is being asked for a purpose in relation to the matters or individuals which is prescribed in 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 certificate will state whether or not the individual is barred from the type(s) of regulated work to which the disclosure relates; and whether or not the individual is under consideration for listing in the PVG children's list or adults' list by the Scottish Ministers.
- 30.** The following civil orders can be disclosed on an Enhanced Disclosure with suitability information:
- 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.

### **Types of Disclosure Records – issued under the 2007 Act**

- 31.** Applications or requests under the 2007 Act must relate to regulated work within the meaning of section 91 of the 2007 Act. In terms of the 2003 Order, an exempted question can be asked about a person doing or wanting to do regulated work under the 2007 Act.
- 32.** Registered persons or countersignatories who make declarations in relation to disclosure requests for a Scheme Record or a Scheme Record Update must be satisfied that they are entitled to receive disclosure information by virtue of satisfying all of the disclosure conditions set out at section 55 of the 2007 Act.
- 33.** If acting on behalf of organisations or individuals not registered under section 120 of the 1997 Act registered persons must satisfy themselves that those on whose behalf they intend to make declarations in relation to disclosure requests for a Scheme Record or a Scheme Record Update are entitled to receive disclosure information by virtue of satisfying disclosure conditions A to C as set at section 55 of the 2007 Act.

### **Scheme Record**

- 34.** 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); and
  - if the individual is under consideration for listing for the type(s) of regulated work, states that fact.
- 35.** The Scheme Record also includes any vetting information that exists in relation to the individual. Vetting information is:
- convictions and cautions held on central records in the UK;
  - 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
  - prescribed civil orders.
- 36.** The same civil orders that can be disclosed on an Enhanced Disclosure with suitability statement can also be disclosed as vetting information on the Scheme Record (see paragraph 30 above).



- 37.** 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); and
  - the name and address of the regulatory body and registration number (on any copy for a regulatory body only).

### **Scheme Record Update**

- 38.** The Scheme Record Update is designed for use by organisations when asking an individual who is already a PVG Scheme member (and who has had a Scheme Record issued in the past) to do regulated work for them. The organisation must be a registered person or use an umbrella body to act as a registered person on their behalf.
- 39.** The Scheme Record Update 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); and
  - if the individual is under consideration for listing for the type(s) of regulated work, states that fact.
- 40.** The Scheme Record Update includes:
- the date that the PVG Scheme member's Scheme Record was last disclosed (and the disclosure record number of the individual's copy);
  - a statement as to whether that Scheme Record contained vetting information;
  - either a statement confirming that no new vetting information has been added since the Scheme Record was last disclosed or the date of each addition;
  - either a statement confirming that no vetting information has been deleted since the Scheme Record was last disclosed or the date of each deletion.
- 41.** The Scheme Record Update 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 Update; and
  - the name and address of the registered person and countersignatory details.
- 42.** The Scheme Record Update does not include any vetting information.

### **Scheme Membership Statement**

- 43.** The Scheme Membership Statement is designed for personal employers asking an individual to do regulated work for them or for pre-emptive use by 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 should not normally request this type of disclosure because it does not contain all the information to which they are entitled (but they are not prohibited from doing so).
- 44.** 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); and
  - if the individual is under consideration for listing for the type(s) of regulated work, states that fact.

45. 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; and
  - the name and address of the personal employer on the personal employer's copy (if applicable).

## Registration

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

46. Registration applications are made to Disclosure Scotland under section 120 of Part V of the 1997 Act. For positions in England and Wales, or Northern Ireland applications must be submitted to the appropriate organisation, that is: the Criminal Record Bureau (CRB) for positions in England and Wales, and AccessNI for positions in Northern Ireland.
47. Persons or bodies wishing to countersign applications for Standard and Enhanced Disclosures, or make declarations in relation to PVG disclosure requests must be registered with Disclosure Scotland. 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.
48. 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 exempted questions by virtue of the 2003 Order. Where the registered person intends to countersign applications or make PVG declarations or requests on behalf of other bodies or individuals, then the registered person must be able to satisfy Disclosure Scotland that the bodies or individuals, on whose behalf they are acting, are entitled to ask exempted questions.
49. 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. Such 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 ongoing suitability checks to confirm that anyone listed in the register remains suitable to receive disclosure information. During the first year of registration Disclosure Scotland will monitor applications or requests received to ensure organisations have an understanding of the legislation. This will help to reduce errors in the completion of forms.
50. Registered persons may have a role in relation to Basic Disclosures. In these circumstances it is expected that the organisation will authenticate the identity of the individual and ensure the accuracy of the information prior to submission of the application to Disclosure Scotland.

## Registered persons acting on behalf of others – acting as an “umbrella body”

51. Umbrella bodies may countersign applications for Standard or Enhanced Disclosures or make declarations in relation to PVG disclosure requests on behalf of other organisations. Umbrella bodies countersigning Standard Disclosure applications on behalf of others must satisfy themselves that those on whose behalf they intend to countersign applications are entitled to receive disclosure information by virtue of that organisation or person being able to ask an exempted question. For Enhanced Disclosures, the organisation or person must be entitled to ask the exempted question for a prescribed purpose as set out in the Criminal Records Regulations.<sup>7</sup>
52. Umbrella bodies making declarations in relation to PVG disclosure requests on behalf of others must satisfy themselves that those on whose behalf they intend to make declarations are entitled to receive disclosure information by virtue of that organisation or person being able to ask an exempted question in relation to considering a person’s suitability to do regulated work or considering a person’s suitability for doing or continuing to do regulated work under the 2007 Act.
53. Umbrella bodies must take reasonable steps to ensure that those on whose behalf they act and to whom they then pass the disclosure information also comply with the requirements of this Code regarding the use of disclosure information. Reasonable steps include keeping records of those on whose behalf they act and evidence that they are ensuring those to whom they pass information comply with the Code. Failure by an umbrella body to take appropriate action to ensure compliance with the Code by a person or organisation making use of an umbrella body may result in Disclosure Scotland refusing to process applications or requests for that umbrella body. In addition, failure by any person or organisation making use of an umbrella body to comply with the requirements of this Code may result in the umbrella body or Disclosure Scotland refusing to process applications or requests for that person or organisation.
54. Umbrella bodies acting on behalf of organisations or individuals not registered with Disclosure Scotland may be asked by Disclosure Scotland to disclose details of those persons or organisations on whose behalf they countersign applications or make PVG declarations or requests. This information may be required as part of the Disclosure Scotland quality assurance process.

## Central Registered Body in Scotland

55. The Central Registered Body in Scotland (CRBS) has been established under the auspices of Volunteer Development Scotland. CRBS is registered with Disclosure Scotland as an umbrella body. It can act on behalf of qualifying voluntary organisations<sup>8</sup> in Scotland.
56. CRBS will handle applications and disclosure requests under the 1997 and 2007 Acts in accordance with this Code. CRBS must ensure that 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 and other exempt positions are compliant with the provisions of the Code. Failure by persons or bodies corporate or unincorporate, who use CRBS as an umbrella body, to comply with the requirements of CRBS and this Code may result in refusal by CRBS to handle applications or requests on their behalf. More information on CRBS is available on their website at: [www.crbs.org.uk](http://www.crbs.org.uk).

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<sup>7</sup> The Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 (SSI 2010/168).

<sup>8</sup> These are organisations in respect of whom the fees for PVG disclosure records are waived for volunteers, see regulation 7 of the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 (SSI 2010/167).

## The Register under the 1997 Act

57. The Police Act (Criminal Records) (Registration) (Scotland) Regulations 2010 (SSI 2010/383) (“the Registration Regulations”) set out the details to be included in the register maintained by Disclosure Scotland on behalf of Scottish Ministers. These are:
- (a) 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 any 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 questions, that the person is likely to ask; and
    - (v) a specimen of the signature of the person being included.
  - (b) 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) a 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 questions, 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 exempted questions and, if so, the nature and purpose of those questions; and
    - (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).
  - (c) 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 questions that the person is likely to ask; and
- (v) a specimen of the signature of the person and any countersignatory.

- 58.** “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.
- 59.** 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.
- 60.** Applicants for registration will be required to supply information as detailed above for the register. As regards the information about the nature and purpose of the exempted questions, applicants should specify the basis they, or those on whose behalf they will be countersigning applications or making declarations for PVG disclosures, have for asking exempted questions and the type of questions they are likely to ask (see Annex A).
- 61.** 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.
- 62.** The registered person must ensure the application fee for registration and the nomination of countersignatories (if applicable) and subsequently the annual fee for continued registration is paid. Failure to pay the required registration fee may lead to the registration being suspended, during which time no further disclosure applications or requests will be processed, depending on the circumstances of the case. A final consequence of the failure to pay the registration fee will be the removal of the registered person from the register. 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 delete any that are no longer active. This will allow the opportunity to update any other areas of the registration details that are inaccurate, for example, telephone contact details.
- 63.** Until 31 March 2011, the cost of registering is a one-off charge of £150 and a further £10 for every countersignatory. From 1 April 2011, all new registered persons (as well as existing registered persons) must pay an annual subscription for registration. There will be a minimum annual charge of £75 for first or continued registration and that will cover the registration of the registered person, (including the lead signatory) and up to four countersignatories. Adding a new countersignatory during the course of the subscription

year will cost £15 each, irrespective of how many existing countersignatories exist for the registered person. Removing a countersignatory or ending registration will not incur a fee. Where applicable, an additional fee of £15 each will be payable annually in respect of the fifth and each subsequent countersignatory.

### How to apply for registration

64. Applications for registration must be made in writing, on a Disclosure Registration Application form. Information about how to apply and details of the appropriate fees are available on the Disclosure Scotland website: [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk). Full details will also be provided with the registration pack provided to all prospective registered persons.

### Identity

65. Each application for registration must be accompanied by such evidence of identity as may be requested by Disclosure Scotland. Full details will be provided in the registration pack.

### Lead signatories for bodies corporate and unincorporate

66. 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 is successful, the person who signs the application on behalf of that body will be included in the register and will be known as the lead signatory. The application must also contain information in support of the application which is requested by Disclosure Scotland.
67. It is recommended that the lead signatory for a body corporate or unincorporate should be a senior figure within the organisation. The test will be that the individual should be a person who has a measure of management responsibility for those making recruitment decisions.
68. The lead signatory will be the principal point of contact between Disclosure Scotland and the organisation on all matters connected with the registration of that organisation. The lead signatory can countersign disclosure applications and requests but often that role is fulfilled on a day-to-day basis by countersignatories.
69. 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, 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.
70. If the lead signatory of a body corporate or unincorporate is removed from the register by Disclosure Scotland, a replacement must be appointed without delay.
71. 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 should ensure that another countersignatory registered with Disclosure Scotland countersigns or makes a declaration on their disclosure application or request form.

# Obligations in connection with the use of disclosure information

## Fair use of disclosure information

- 72.** Recipients of disclosure information must:
- not use disclosure information for purposes other than those for which it has been provided;
  - have regard to any guidance issued by Disclosure Scotland on the use of the disclosure information; and
  - not discriminate against the subject of disclosure information on the basis of any conviction or other details revealed.
- 73.** Standard and Enhanced Disclosure information is made available for purposes of assisting recruitment decisions for a particular position or licence. They should not be relied upon as the sole piece of information on which a decision is made. The disclosure information issued under the 1997 Act should not be used if considering the individual for regulated work under the PVG Scheme.
- 74.** Under the PVG Scheme, an organisation is entitled to use all vetting information on a Scheme Record to inform a recruitment or retention decision. However, an organisation must apply any criteria around vetting information in a fair, consistent and proportionate manner. The criteria should be identified in advance and linked to the specific role. An individual who is allowed to become or remain a PVG Scheme member is not unsuitable to do regulated work. However, vetting information may indicate that they are not suitable to do a particular job.
- 75.** An organisation can refuse to recruit or continue to use an individual to do regulated work if that individual refuses to consent to PVG Scheme membership or disclosure requests without reasonable grounds to do so.
- 76.** An organisation receives an individual's disclosure certificate or record from Disclosure Scotland to help them make a decision. Usually this will be 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. The organisation is not allowed to pass it on to anyone who is not entitled to have access to it the course of their duties. If they do so, they will be committing an offence.
- 77.** An individual who has been listed in the PVG children's list or adults' list (or both) in Scotland is barred from doing the corresponding type of work elsewhere in the UK. Any individual who is included in an equivalent barred list in England and Wales or Northern Ireland will also be barred from working in the relevant workforce with children or protected adults or both, in Scotland. An employer commits an offence if they appoint an individual who is barred from doing regulated work, regardless of whether the individual is on a barred list in Scotland or in another UK jurisdiction.
- 78.** For someone with convictions, gainful employment is often the most successful way of avoiding re-offending. The Scottish Government is therefore keen to ensure that those members of the community who may have convictions are not unfairly treated in the process of considering them for positions of trust.

79. It is recommended that employers should have a written policy on the recruitment of people who have been convicted. Disclosure Scotland has a sample policy and this is available to download from the Disclosure Scotland website: [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk).

### Handling disclosure information

80. Registered persons and others in receipt of disclosure information should handle this sensitive information responsibly. This means they should not disclose information in contravention of section 124<sup>9</sup> of the 1997 Act or sections 66 or 67 of the 2007 Act. Unauthorised disclosure is an offence. 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.
81. Information supplied under section 113B(5) of the 1997 Act to a registered person which is not shown on an Enhanced Disclosure, must not be disclosed to a third party or to the subject of the Enhanced Disclosure.
82. Disclosure information must be handled only by those persons within an organisation entitled to have access to it the course of their duties. These individuals must also comply with the conditions of the Code.
83. Registered persons must have a written security policy on the handling, retention and destruction of disclosure information. Those registered persons who countersign applications or make declarations on disclosure requests on behalf of others must in addition, ensure that those on whose behalf they countersign or make declarations have such a written policy. A sample policy is available from Disclosure Scotland and can be downloaded from the Disclosure Scotland website: [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk).
84. Both the 1997 Act and the 2007 Act set out certain offences relating to the unlawful use of disclosure information. Details of offences under the 1997 Act are given in Annex B and offences under the 2007 Act are in Annex C.
85. There may be circumstances when a person in possession of disclosure information is asked to reveal details of the information to a third party in connection with legal proceedings, for example, in a case submitted to an Employment Tribunal. In that event, the registered person should inform Disclosure Scotland immediately of any such request and prior to the release of any information.
86. The 2007 Act prevents third parties who are not directly employing, or considering employing somebody to do regulated work, from asking a scheme member for sight of their disclosure record. However an exception is made where organisations that provide education or health services are contracting with a third party organisation to provide transport services to children or protected adults.
87. The Protection of Vulnerable Groups (Scotland) Act 2007 (Unlawful Requests for Scheme Records) (Prescribed Circumstances) Regulations 2010 (SSI 2010/194) set out the 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 the contractor wishes to use to provide the services. The organisations are: a council, a school, an educational establishment, a health body, an independent hospital, a private psychiatric hospital, an independent clinic or independent medical agency. The contractor can only show the disclosure record to the commissioning organisation if the employee concerned has given their consent in writing to their employer. The consent should be freely given and not under

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<sup>9</sup> The Serious Organised Crime and Police Act 2005 schedule 14, paragraph 12 amended section 124.



duress. The employer should keep a copy of this written consent. Disclosure Scotland is not involved in this arrangement.<sup>10</sup>

88. Disclosure information must be stored in secure conditions. Documents should be kept in lockable and non-portable storage units. Keys or combinations for such storage units should not be freely available within an organisation and access to storage units and rooms containing storage units should be restricted to named individuals. The disclosure information should not be retained in an employee's personnel file. Care must also be taken, once electronic disclosure information is available, that unauthorised viewing, transmission, storage or printing does not take place.
89. Registered persons or organisations in possession of disclosure information must not retain such information for longer than it is relevant to their needs. Organisations should be aware at all times of the need to comply with the Data Protection Act 1998 which requires that personal information should be kept only for as long as it is required for the purposes for which it was obtained. This may be the date on which the recruitment or other relevant decision has been taken, or after the date on which any dispute<sup>11</sup> about the accuracy of the disclosure information has been resolved. For PVG disclosure records this may be the date an individual ceases to carry out regulated work for that organisation.
90. Where, however, disclosure information has been obtained by a registered person on behalf of another organisation, the disclosure information should not be retained by the registered person after it has been disclosed to those on whose behalf it was obtained.
91. Sample tracking documentation which may be used for this purpose is available within the Disclosure Scotland website: [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk). This information may be required later, for example, during the registration of a care service. It is also recommended that a written record is kept of all those to whom disclosure information is passed for the purposes of a clear audit trail.
92. The destruction of all types of disclosure information should be by suitable secure means, for example, shredding, pulping or burning. It should not be kept in any insecure receptacle, such as a waste bin or confidential waste sack, whilst awaiting destruction. No photocopy or other image of the disclosure information may be retained.

## Assurance and audit

93. This Code requires recipients of disclosure information to:
  - undertake at the request of Disclosure Scotland an audit of their handling, retention and destruction of disclosure information.
94. This may take the form of:
  - completing a self assessment audit 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-operating with Disclosure Scotland staff during any compliance checks (audits), including visits to a registered person's premises, in order that Disclosure Scotland can be satisfied that those receiving disclosure information are using the information provided in accordance with the Code and the law;

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<sup>10</sup> For more information, see Chapter 5 of *Protecting Vulnerable Groups Scheme: Guidance for individuals, organisations and personal employers*, The Scottish Government, June 2010.

<sup>11</sup> Details of the disputes/appeals procedure are available on the Disclosure Scotland website: [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk).

- reporting to Disclosure Scotland any evidence of failure, either on their own part or on the part of another party to comply with the Code; and
- reporting to Disclosure Scotland any reasonable suspicion that an offence has been committed under sections 123 and 124<sup>12</sup> of the 1997 Act (see Annex B) or sections 65 to 67 of the 2007 Act (see Annex C).

**95.** In conducting compliance audits, Disclosure Scotland will, in particular, seek to:

- ensure that the obligations of those registered in respect of security and retention of disclosures are being met;
- confirm that those registered are making the appropriate type of disclosure application or request;
- confirm that disclosure information provided by Disclosure Scotland is not being used unfairly to the detriment of any person;
- advise registered persons on good practice in the use of disclosure information; and
- identify those 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 their roles have changed and they no longer have a role in processing Disclosures).

**96.** Following receipt of complaints from individuals who have been the subject of disclosures or from members of the public about the behaviour of those persons registered or in receipt of disclosure information, Disclosure Scotland may undertake compliance audits of registered persons which may include visits to organisations. Compliance 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. In such circumstances Disclosure Scotland will determine if a compliance audit will be undertaken.

**97.** Disclosure Scotland will normally pre-arrange compliance audits. However, it reserves the right to undertake such on an unannounced basis. Disclosure Scotland will provide written reports, with recommendations, where appropriate, to those who have been the subject of compliance audit. There may also be mandatory requirements within the report issued to the registered person. These mandatory requirements must be met within agreed timescales. Disclosure Scotland may undertake further compliance audits to verify that any recommendations made as a result of earlier compliance audits have been implemented. If a compliance audit indicates that an offence may have been committed, Disclosure Scotland will report this to the police.

## Identity

### Identity of the individual

**98.** Employers must satisfy themselves of the identity of those applying for positions or those already employed who are, for example, joining the PVG Scheme for the first time. Although Disclosure Scotland will conduct its own identity checks, these should be supplemented by the checks undertaken by organisations and employers. Whilst Disclosure Scotland may have a record of the types of documents which were viewed for

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<sup>12</sup> The Serious Organised Crime and Police Act 2005 schedule 14, paragraph 12 amended section 124 of the 1997 Act.

identification purposes, it is recommended that employers retain details of identity checks undertaken in case of further enquiry by Disclosure Scotland.

99. Those countersigning or making a declaration on disclosure applications or requests should encourage those involved in the recruitment process to ask for documentary evidence of identity from individuals. It is required that **three** pieces of information are requested to support identification. Where possible **one** of these should be photographic (for example, a current passport, new style UK driving licence, a Young Scot card or a National Entitlement Card, etc.). One item of address related evidence containing the name and address of the individual and one item confirming the date of birth of the individual should also be sought. In the absence of photographic evidence, a full birth certificate with a date of birth confirmed will carry more weight than a copy issued more recently. Consistency between the supporting information and the information provided by the individual in his or her application or request tends to lead to a greater level of confidence in their identity.
100. Where an individual claims to have changed his or her name by marriage, common law relationships or any other mechanism, the employer should seek evidence of such a change.
101. A disclosure certificate or record issued by Disclosure Scotland must not be taken as evidence of identity.

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

102. 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 his or her criminal record.
103. With regard to the identity of the individual, employers should take particular care during the recruitment process, ensuring they follow up references and undertake other relevant checks before making an appointment. Consideration should still be given to the information described above, albeit this will relate to foreign documents. There is useful information on the Centre for the Protection of the National Infrastructure's (CPNI) website that might be of help: [www.cpni.gov.uk](http://www.cpni.gov.uk).
104. Registered persons should still request a criminal record check for an individual with no, or very little, address history in the UK. While it may seem to be of limited value to obtain a disclosure for such an individual, under the 2007 Act the individual will become a scheme member and subject to continuous updating which will provide reassurance that the individual is not barred from regulated work and ensure that a registered person will be notified if the barred status changes.
105. Disclosure Scotland performs its duties in accordance with the 1997 and 2007 Acts. At present, Disclosure Scotland does not have access to criminal record information held outside the United Kingdom. The Scottish Government in partnership with the UK Government is taking forward work to facilitate access to criminal record information held in other countries.
106. Employers 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. Guidance on the availability of this service is provided by the CRB in England. This can be accessed at: [www.crb.homeoffice.gov.uk](http://www.crb.homeoffice.gov.uk).
107. It is suggested that the onus is put onto the individual to provide details of their criminal conviction history from their home country or countries of previous residence. It should be remembered, however, that these may require 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 the individual or the employer has to meet any additional cost. There is useful information about certain foreign countries on the CPNI website.

## Consideration of information contained in Disclosures

### Factors to take into account when considering disclosure information

- 108.** 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;
  - whether the person is barred from working with particular vulnerable groups;
  - 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; and
  - whether the individual's circumstances have changed since the offending behaviour or the other relevant matters.
- 109.** With regard to the PVG Scheme, 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. In addition, section 35 of the 2007 Act makes it an offence for any organisation (as defined in the 2007 Act this includes individuals acting in the course of a business) to offer regulated work to an individual who is barred from that type of regulated work. The Protection of Vulnerable Groups (Scotland) Act 2007 (Removal of Barred Individuals from Regulated Work) Regulations 2010 (SSI 2010/244) provide that where an organisation for which an individual is doing regulated work is notified under the 2007 Act 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. It is an offence for an organisation to fail to comply with these Regulations. A barred individual cannot participate in the PVG Scheme in respect of the type(s) of regulated work from which they are barred. If the individual is not barred, then the organisation must decide whether the individual is suitable for the position.

### Validity of disclosures

- 110.** All disclosure information is considered up to date upon completion of the relevant checks.
- 111.** 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.
- 112.** PVG Scheme members are subject to continuous updating and any new vetting information which indicates that they might be unsuitable to do the corresponding type(s) of regulated work will be acted upon by Disclosure Scotland. Disclosure Scotland will keep a record of registered persons and regulatory bodies which have registered an interest in an individual, usually by countersigning a PVG disclosure application or request. If the individual is

placed under consideration for listing or barred as a result of the new vetting information (or for any other reason), then all interested organisations will be notified of that fact. This means that there is no need for such organisations to require periodic re-checks of PVG Scheme members. Some organisations may wish, however, to use Scheme Record Updates to ensure that no new vetting information has come to light which, although it has no bearing on unsuitability to work with vulnerable groups in general, may be relevant to the specific position (such as driving convictions for individuals whose role involves driving children or protected adults).

## Disputes

- 113.** The subject of the disclosure may raise a dispute with Disclosure Scotland if he or she believes that it may contain inaccurate information. If Disclosure Scotland is satisfied, after investigation, that the original Disclosure contains inaccurate information they will issue a new Disclosure. Any re-issued Standard or Enhanced Disclosure or PVG disclosure record will be copied to the person who countersigned the application or request. Details of the disputes/appeals procedure are available on Disclosure Scotland website at: [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk).

## Terminating Registration

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

- 114.** 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. Any such request should be made by completing the appropriate parts of the Disclosure Registration Modification form, and submitting the completed form to Disclosure Scotland. The effect of this request will be to end registration in its entirety.
- 115.** For registered persons who are a body corporate or unincorporate, or a statutory office holder, a request for removal from the register should be made by completing the appropriate parts of the Disclosure Registration Modification form. The form must be signed in the appropriate place by the lead signatory. The effect of this request will be to end registration in its entirety.
- 116.** Separately, a countersignatory can request removal from the register. This request should be countersigned by the lead signatory and its effect will be to end the countersignatory's ability to act on behalf of that registered body in the future.

### Removal of a registered person from the register by Disclosure Scotland

- 117.** 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. Before removing a person from the register, Disclosure Scotland must notify that person in writing that they are of that opinion, the reasons for that opinion and must inform that person of the right to make representations.
- 118.** A 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 that person should not be removed from the register and Disclosure Scotland must consider any such representations.

- 119.** After considering such representations, Disclosure Scotland must inform the registered person:
- that they are of the opinion that that person is unlikely to wish to countersign applications for Standard or Enhanced Disclosures or to make declarations in relation to PVG disclosure requests and the reasons for that opinion and that that person will be removed from the register at the end of a further period of 28 days; or
  - that they do not propose to take any further action.
- 120.** If no representations are received within 28 days, Disclosure Scotland may remove the person from the register at the end of that period. The person can at any time after a period of 28 days has elapsed<sup>13</sup> apply to re-join the register, if required, on payment of the appropriate fee.
- 121.** Where Disclosure Scotland is satisfied in the case of a registered person (other than a registered body) or a person nominated by them, that the person has died or is incapable for any other reason, 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.

### Persons deemed not suitable to access disclosure information

- 122.** Under section 120A of the 1997 Act, Disclosure Scotland may refuse to include in, or may remove a person from, the register held under section 120 of the 1997 Act 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. The procedure to be followed when registration is refused or cancelled is set out in the Registration Regulations at regulation 6.<sup>14</sup>
- 123.** A person who has been notified as set out in the Registration Regulations may, within 28 days of the receipt of such notice, make representations in writing to Disclosure Scotland as to why Disclosure Scotland should not refuse to include that person in or should not remove that person from the register. Disclosure Scotland will consider any such representations.
- 124.** After considering such representations, Disclosure Scotland shall inform the person:
- that they are of the opinion that they should refuse to include that person in, or should remove that person from, the register, and the reasons for that opinion; or
  - that they do not propose to refuse to include that person in, or to remove that person, from the register.
- 125.** If no representations are received within 28 days, Disclosure Scotland may proceed at the end of that period to refuse to include that person in, or to remove that person, from the register.
- 126.** If representations are received and Disclosure Scotland decide to refuse to include that person in, or to remove that person, from the register, the period within which that decision is to be implemented is the end of a further period of 28 days beginning with the day of receipt of the notification of the results of Disclosure Scotland's considerations of their representations.

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<sup>13</sup> Regulation 11(1) of the Police Act 1997 (Criminal Records)(Registration)(Scotland) Regulations 2010 provide for this.

<sup>14</sup> The Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2010 (SSI 2010/383).

- 127.** No person may seek inclusion in the register if Disclosure Scotland has, within the period of two 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 or had become available to an individual who was not a suitable person to have access to disclosure information.
- 128.** Under regulation 4(3) of the Registration Regulations, 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 information which has become, or is likely to become, available to that individual as a result of registration of the body corporate or unincorporate or statutory office holder which nominated that individual. In addition, Disclosure Scotland may also refuse to accept, or to continue to accept, the inclusion in the register of any person if their registration is likely to result in information becoming available to an unsuitable person. The procedure to be followed when registration is refused or cancelled is set out in the Registration Regulations at regulation 4.
- 129.** The Registration Regulations require that before Disclosure Scotland refuses to accept, or continue to accept, the nomination of an individual they must notify in writing:
- the body corporate or unincorporate or statutory office holder concerned, and that body corporate or unincorporate or statutory office holder may submit the name of another individual in substitution; and
  - the individual nominated that they are of the opinion that they should refuse to accept, or continue to accept, their nomination and the reasons for that opinion and must inform that individual of the right to make representations.
- 130.** Any individual who has been notified as set out in the Registration Regulations may, within 28 days of the receipt of such notice, make representations in writing to Disclosure Scotland as to why Disclosure Scotland should not refuse to accept or continue to accept their nomination and Disclosure Scotland will consider any such representations.
- 131.** After considering such representations, Disclosure Scotland shall inform the nominated individual:
- that they are of the opinion that they should refuse to accept, or continue to accept, the nomination of that individual, and the reasons for that opinion; or
  - that they do not propose to refuse to accept, or continue to accept, the nomination of that individual.
- 132.** If no representations are 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.
- 133.** If representations are received and Disclosure Scotland decides to refuse to accept or continue to accept the nomination of that individual, the period within which that decision is to be implemented is the end of a further period of 28 days beginning with the day of receipt of the notification of the results of Disclosure Scotland's considerations of their representations.
- 134.** No individual may be nominated if Disclosure Scotland has, within the period of two years prior to the date on which the nomination is received by them, refused to accept, or refused to continue to accept, that individual's nomination on the basis that the individual was not a suitable person to have access to disclosure information.

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

- 135.** Under section 122(3) of the 1997 Act, Disclosure Scotland may refuse to issue Disclosures in cases where Disclosure Scotland considers that:
- a registered person 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
  - an 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.
- 136.** Disclosure Scotland may also refuse to issue Disclosures in cases where Disclosure Scotland considers the conditions of registration (which are set out in regulation 12 of the Registration Regulations) have not been met. Those conditions are that:
- a registered person who is a body corporate or unincorporate must always have a lead signatory listed in the register.
  - a registered person must ensure that the relevant registration fee has been paid timeously.
- 137.** The sanction of suspending processing applications or requests for the registered person will not be imposed without proper investigation. All registered persons are advised that there are offences set out in sections 123 and 124 of the 1997 Act (see Annex B) and sections 65 to 67 of the 2007 Act (see Annex C) in relation to unauthorised disclosure of information provided following an application for a Standard or Enhanced Disclosure or a request for a Scheme Record or Scheme Record Update, and making false statements to access Disclosures. If it appears that an offence has been committed Disclosure Scotland will contact the police.
- 138.** Disclosure Scotland will notify the registered person concerned about the suspension and its justification.
- 139.** Disclosure Scotland will, at the request of the registered person, consider lifting the suspension, but will not do so until it is satisfied that the registered person or countersignatory in question will thereafter fully comply with the Code and 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.
- 140.** In addition, 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, then the Scottish Ministers may remove the registered person from the register or impose conditions on that person as regards continued inclusion in the register.

## Lost Disclosures

- 141.** If a registered person 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 must inform Disclosure Scotland immediately. On request, that 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. Loss may be considered as a breach of the Code. The registered person must also advise the subject of the disclosure immediately of the loss.

## The Rehabilitation of Offenders Act 1974 – Outline of Provisions

1. The aim of the Rehabilitation of Offenders Act 1974 (ROA) 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 ROA, anyone who has been convicted of a criminal offence and sentenced to less than two and a half years in prison can be regarded as rehabilitated after a specified period, provided that they receive no further convictions during that period. After the specified period the original conviction is considered to be spent. This period varies between immediate rehabilitation and 10 years depending on the type of sentence. Generally speaking, the ROA provides that a spent conviction need not normally be disclosed when a person is asked about his or her previous criminal record, and the rehabilitated person cannot be prejudiced if the spent conviction later comes to light. The ROA does not apply to any prison sentence exceeding 30 months and convictions with that sentence can never be spent. As such they will always be disclosed by Disclosure Scotland.
2. However, there are some categories of employment to which the ROA does not apply and for the purposes of which convictions that would otherwise defined as spent have still to be disclosed. These categories of employment may be regarded as “exclusions” from the provisions in the ROA which allow an offender to avoid disclosing spent convictions in response to questions. The ROA allows the list of exclusions to be specified in secondary legislation.
3. When the 1997 Act refers to asking “exempted questions”, it means asking an individual questions about spent convictions in circumstances where the usual effects of the ROA (set out in section 4(2)(a) or (b) of the ROA) have been excluded by an Order made by Scottish Ministers. The current provision for Scotland (at the time of issue of this Code) on matters excluded from section 4(2)(a) or (b) of the ROA is the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 (SSI 2003/231) (as amended).<sup>15</sup>
4. The 2007 Act, does not have an explicit reference to asking an “exempted question”. However, asking a person about their previous convictions for the consideration of that person’s suitability to do regulated work (and consideration of a person’s suitability for any of the other related purposes specified in the 2007 Act) is still deemed to be asking an exempted question because it is these types of positions are excluded from the provisions of the ROA by amendments made to the 2003 Order.

Links to the most recent ROA Exclusions and Exceptions Order and the relevant amending Orders are available on the “Publications” page of Disclosure Scotland’s website at: [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk) under the heading “Legislation”.

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<sup>15</sup> Including, for PVG Scheme and related purposes, by the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2010 (SSI 2010/243).

## Offences: The Police Act 1997

**Note:** This Annex shows the offences set out in the 1997 Act. If you need further information about the offences, it is recommended that employers and Registered Persons seek professional legal advice.

The following is taken from section 124 of the 1997 Act

### Offences - disclosure

1. A member, officer or employee of a body registered under section 120 commits an offence if he discloses information provided following an application under section 113A or 113B unless he discloses it, in the course of his 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 following an application countersigned at the request of a body which is not registered under section 120, a member, officer or employee of the body commits an offence if he discloses the information unless he discloses it, in the course of his duties, to another member, officer or employee of that body.
3. Where information is provided under section 113A or 113B following an application countersigned by or at the request of an individual-
  - (a) the individual commits an offence if he discloses the information unless he discloses it to an employee of his for the purpose of the employee's duties, and
  - (b) an employee of the individual commits an offence if he discloses the information unless he discloses it, in the course of his duties, to another employee of the individual.
4. Where information provided under section 113A or 113B 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 he discloses 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 are 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 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 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.

**The following is adapted from section 123 of the 1997 Act**

**Offences - Falsification, etc.**

In addition to offences resulting from inappropriate disclosure of disclosure information, there are other offences which apply to applicants or countersignatories who provide false information under Part V of the 1997 Act.

1. A person, in these circumstances, commits an offence if, with the intent to deceive, they:
  - (a) make a false certificate,
  - (b) alter a certificate,
  - (c) use a certificate which relates to another person in a way which suggests that it relates to them, or
  - (d) allow a certificate 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.
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.

## Offences: The Protection of Vulnerable Groups (Scotland) Act 2007

**Note:** This Annex shows the offences set out in the 2007 Act. If you need further information about the offences, it is recommended that employers and Registered Persons seek professional legal advice.

### The following is taken from 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.

### The following is taken from section 66 of the 2007 Act

- (1) A person to whom disclosure information is disclosed under section 51, 52, 53 or 54 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, 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.

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

#### **The following is taken from 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.

#### **The following is taken from section 69 of the 2007 Act**

A person guilty of an offence under section 65, 66 or 67 above is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.