

Disclosure and Protecting Vulnerable Groups (PVG) Policy

UK Campuses

September 2020

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POLICY

HERIOT-WATT UNIVERSITY PROTECTING VULNERABLE GROUPS (PVG) POLICY

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1. Policy Statement

The University is committed to providing a safe and protected environment for its staff and students at all times.

We comply fully with the relevant legislation and statutory guidance to ensure that, where relevant, applicants, employees and students are members of the Protection of Vulnerable Groups Scheme (the PVG Scheme) which was introduced by the Protection of Vulnerable Groups (Scotland) Act 2007 (the 2007 Act)

2. Scope and Purpose

As Disclosure Scotland is governed by the following legal requirements issued by Scottish Government, this policy applies to UK campuses only.

[Protection of Vulnerable Groups \(Scotland\) Act 2007](#)
[Part V of the Police Act 1997](#)

Employees, workers and students who carry out “regulated work” with children and/or “regulated work” with a “protected adult” under the 2007 Act are required to be members of the PVG scheme. This is to ensure that they are not barred from carrying out work with children and/or “protected adults” or become barred in the future whilst still in our employment.

3. Principles

This policy is guided by the following principles:

- The University will carry out checks only where they are necessary and required under the law
- Information will be processed and handled sensitively and confidentially and in full compliance of Data Protection Legislation and in line with our [Privacy Notice](#)
- We will adhere to the [Code of Practice](#) as issued by Scottish Ministers under Part V of the Police Act 1997
- Having a criminal record will not necessarily prevent employment with the University. This will depend on the nature of the position, together with the circumstances and background of the offences

4. Background

The Protection of Vulnerable Groups (Scotland) Act 2007 came into effect on 28 February 2011. It created a membership scheme to replace the previous Disclosure Scotland checking system for individuals who work with children and/or protected adults. The legislation makes it an offence for an organisation to employ a person who is barred from working with children and/or Protected Adults and for an individual to put themselves forward for regulated work whilst barred.

Within the Act, the following definitions apply:

Children - individuals who are under the age of 18;

Protected Adults - individuals aged 16 or over who are provided with a type of care, support or welfare service;

Regulated Work - individuals who are specifically employed for the majority of their time in caring for, supervising and advising children and/or protected adults.

The PVG Act defines 'regulated work' by reference to:

- the activities that a person does;
- the establishments in which a person works;
- the position that they hold;
- or, the people for whom they have day to day management responsibility.

5. How to Assess Whether Work is Regulated

Disclosure Scotland has confirmed that Higher Education Institutions are included within the Protection of Vulnerable Groups legislative framework. However, not all individuals who come into contact with children or Protected Adults through their work are doing regulated work under the terms of the Act. Therefore, only University employees, workers and certain students who are enrolled on certain degree programmes who are specifically engaged for the majority of their time in caring for, supervising and advising children and/or Protected Adults will require Scheme membership.

As Heriot-Watt University admits a proportionately small number of students each year who are under 18 years of age, the majority of members of staff will be deemed to engage only in "incidental contact" with those who are defined as "children" under the Act.

Examples of the types of role where it may be appropriate for the postholder or worker to have PVG Scheme membership are attached at **Appendix A**. Disclosure Scotland has provided guidance to the Higher Education sector on the types of roles within Universities that will be covered by the Act and the Human Resources Directorate (HR) Team will work with the relevant Schools/Sections to identify any posts that will require Scheme membership in addition to those which are listed.

6. The PVG Scheme

Individuals who work on a regular basis with children and/or Protected Adults will join the PVG Scheme and from then on, their membership records will be automatically updated and their employer(s) notified if new information is received e.g. if they come under consideration for being included on the list of individuals who are barred from working with regulated groups.

There are 2 types of check available:

PVG Scheme Record

A PVG Scheme Record check can be requested by an employer who is employing an individual to do regulated work when the individual is joining the PVG Scheme for the first time. The Scheme Record certificate is portable and is not specific to one post.

The Scheme Record certificate is a document containing impartial and confidential information held by the police and government departments which can be used by employers to make safer recruitment decisions ("vetting information"). It also includes:

- Confirmation that the individual is not barred from (or is under consideration for being barred from) regulated work with children and/or Protected Adults, as appropriate;
- Spent and unspent convictions held on central records;
- Certain non-conviction information which a Chief Constable may choose to disclose should s/he deem it to be relevant to the position sought

PVG Scheme Record Update

A PVG Scheme Record Update can be requested by an employer who is recruiting an **existing** PVG Scheme member. The purpose of the Update is to enable employers to check that a potential employee is a PVG Scheme member and is not barred from working with vulnerable groups. This certificate will highlight the existence (but not full details) of any previous vetting information or new information which has become available since the individual joined the Scheme.

The cost of joining the Scheme for new and existing members of staff will be met by individual University departments.

7. Recruitment

Recruitment adverts and job descriptions for “regulated roles” will detail where the postholder will undertake duties which fall within the scope of the Act. Any subsequent offer of appointment will be conditional on the University receiving a satisfactory PVG Scheme record check prior to employment commencing.

It is not permitted to carry out a PVG check where the post to be filled does not fit the definition of the Act, therefore the University cannot undertake blanket PVG checks “on the off chance” that the post holder will be working with children or protected adults at some point during their employment.

If a vacancy is not one where a PVG Check must be carried out as per the list detailed in **Appendix A**, but it falls into a category that may require a check or that some work with children or protected adults may be undertaken, the Hiring Manager must email [HR helpdesk](#) before creating the vacancy.

HR will assess the work to be carried out, usually in direct discussion with the Hiring Manager. If the work meets the Disclosure Scotland definition of "regulated work", a PVG check will be necessary. If not, HR will advise if any other type of Disclosure is appropriate for the role.

In addition to joining the PVG scheme, an individual of any nationality who has been resident in a country outside the UK for a period of 3 months or more, either during the past 5 years, or since reaching the age of 16, will be required to provide a criminal records check certificate or equivalent from each country where they have been resident.

The University requires all relevant new employees, including casual staff or those who transfer within the University to a new role which involves them undertaking duties which fall within the scope of the Act, to undertake a satisfactory PVG Scheme Record check as follows:

Individuals who are already Scheme members

In some cases, individuals may already be members of the PVG Scheme if it has been required of them by another employer or for voluntary work which they

undertake. In such circumstances, a PVG Scheme Record Update will be requested in the first instance. If the Update highlights that vetting information exists, the individual will be asked to provide a copy of their full Scheme Record. If the Update highlights that new vetting information has been added since the individual's most recent full Scheme Record was produced, a further full PVG Scheme Record check will be requested.

Individuals who are not already Scheme members

The University will require them to join and will provide assistance to the individual during the application engagement process.

8. Obtaining PVG Membership

Only Registered Bodies can access Scheme Records and Scheme Record Updates. The University holds Registered Body status. The University is permitted one designated Lead Signatory and a number of Counter-signatories are employed within the HR Directorate. The Counter-signatories will initiate and complete the process of obtaining the Scheme membership confirmation.

When the successful candidate for the post has been identified, the verbal and written offer of employment will be made subject to receipt of a satisfactory PVG Scheme Record check. The conditional offer will include the appropriate PVG Scheme application form and guidance on completion.

The completed PVG Scheme application form and associated documentation will be returned to the Counter-signatory, who will verify the identity, check the details, countersign the form and forward it to Disclosure Scotland.

Disclosure Scotland will then carry out the necessary checks and return the PVG Scheme Record check to the relevant Counter-signatory. A copy of the certificate will also be sent to the individual concerned.

9. Commencing Employment

It is an offence for an organisation to offer regulated work to someone who is barred from carrying out this type of work, therefore no individual will be able to undertake any form of regulated work for the University until the appropriate PVG check has been undertaken and either a satisfactory full Scheme Record or Scheme Record Update is received.

In exceptional circumstances where the timescale with the checking process is likely to cause serious operational difficulties Heads of School/Section/Directorate or the Secretary of the University, may at their discretion permit the new member of staff to commence employment on condition that a risk assessment is carried out and adequate supervision arrangements are put in place until the PVG checks are complete. The form to be completed in this circumstance is attached at **Appendix B**. If permission is not granted, employment cannot commence until a satisfactory check has been received.

10. Temporary Staff (Casuals and Agency)

Heads of School/Section/Directorate who engage temporary staff are responsible for ensuring that appropriate PVG Scheme checks have been undertaken, where required, for all those who are employed on this basis prior to them taking up the position. Similar arrangements should also be made for self-employed individuals

who are paid on the submission of invoices. Advice on whether a post is likely to require a PVG check can be provided by contacting the [HR helpdesk](#).

If the timescale associated with the checking process is likely to cause serious operational difficulties, authorisation for an early commencement of employment may be sought from the Heads of School/Section/Directorate or Secretary of the University through the risk assessment process detailed above (9).

11. Job Role Changes During Employment

If work responsibilities change either wholly or in part during the course of employment and the employee is subsequently going to be involved with working with children or protected adults, then the line manager or Principal Investigator should contact the [HR helpdesk](#) at the earliest opportunity before the work starts to obtain advice. If a PVG check is required, HR will undertake the check with the employee. The employee will not be able to commence that part of work until the University receives a satisfactory PVG check.

12. Referrals to Disclosure Scotland

The PVG Act aims to provide a robust system by which unsuitable people are prevented from doing regulated work with children or Protected Adults and by which people who become unsuitable are identified. The process of providing such information to Disclosure Scotland is called "making a referral". The PVG Act places a duty upon the University to make a referral in the following circumstances:

- Where an individual doing regulated work has done something to harm a child or protected adult and;
- Where the impact is so serious that the University has (or would) permanently remove the individual from regulated work

If, as a result of any of the referral grounds being met, the University dismisses an individual who was doing regulated work or transfers them to other duties that do not involve that type of regulated work, a referral to Disclosure Scotland will be made on behalf of the University by the Lead Signatory. It is an offence for the University not to make a referral within 3 months of the criteria for referral being met.

13. Approval of PVG Certificates

HR will make an initial assessment of the content of the PVG Scheme Record or PVG Scheme Record Update. Where no evidence of convictions or any other related information is provided, the individual will receive a letter confirming his/her appointment.

If the certificate confirms that the individual is barred from working with children and/or Protected Adults, the offer of employment will be withdrawn.

If the certificate confirms that the individual holds a conviction or any other related information, HR will make an initial assessment of whether the information provided has any potential relevance to the post offered. In such circumstances each case will be given individual consideration and further exploration may be required to determine whether or not the applicant can still be appointed to the position. The HR Recruitment Consultant will discuss the certificate with the applicant and the Recruiting Manager. The aim will be to achieve a structured, open and honest discussion between all parties.

The suitability for employment of a person with a criminal record or who has other relevant information revealed in their check will vary. It will depend upon the nature of the job and the details and circumstances of any conviction or relevant information. The discussion should cover these matters, in order that the applicant's criminal record or other relevant information and circumstances can be assessed in relation to the tasks he or she will be required to perform, and the circumstances in which the work is to be carried out. It should be remembered that no two offences are exactly alike and should not be treated so.

The following factors are likely to be relevant in considering the certificate:

- The nature of the conviction or relevant information and its relevance to the safety of other employees, students, the public etc.
- The seriousness of any offence revealed
- The length of time since this occurred- is it many years since the conviction took place or is it recent?
- The number of convictions – do the convictions show a pattern of criminal behaviour or offending?
- Any relevant information offered by the applicant about the circumstances
- The degree of remorse, or otherwise expressed by the applicant and their motivation to change
- Are the applicant's references satisfactory?

Having considered all these matters carefully and thoroughly, a decision can then be taken as to whether the individual should be appointed and thereafter will be formally informed of the decision in writing.

Further information on the University's policy on the recruitment of ex-offenders is attached at **Appendix C**.

14. Existing Staff and Casual Workers Holding a PVG

It is the responsibility of all staff who hold a PVG certificate to inform the University if they are charged with or convicted of a criminal offence during the course of their employment. Failure to disclose criminal proceedings including warnings, cautions, and reprimands/convictions may result in disciplinary action being taken against the member of staff.

15. Other Types of Criminal Records Checks

For non-regulated work the University may require an applicant to obtain a disclosure check from Disclosure Scotland to check whether or not the employee or applicant has a relevant criminal record. Hiring Managers should contact the [HR helpdesk](#) for further advice before creating the vacancy.

The University will provide the applicant with information as to the type of disclosure required for the role in question. The University will also pay all fees in connection with the provision of a disclosure check.

Basic Disclosure Check

A basic disclosure is the most common and lowest level of disclosure available. It includes information on any 'unspent' convictions the person has.

Applications for basic disclosure will be processed according to the Scottish rule under the [Rehabilitation periods for particular sentences](#) section of the [Rehabilitation of Offenders Act 1974](#).

Disclosure Scotland doesn't monitor people with basic disclosure, so the certificate is only valid when it's created and not for a specific length of time.

Standard and Enhanced Check

Standard and enhanced disclosures involve higher level checks. A standard disclosure is used to help employers make sure their employees are suitable for certain types of work.

Standard disclosure is for specific roles such as solicitors, management accountants or those providing a care service.

Enhanced disclosure applies to specific roles such as checking people are suitable for adoption, or applying for certain gaming or lottery licences.

16. Handling, Use, Storage and Retention of Information

The University complies fully with the Data Protection Act 2018 and Disclosure Scotland's Code of Practice on the secure handling, use, storage and retention of Scheme membership information. Further details on the secure handling, use, storage, retention and destruction of disclosure information are attached at **Appendix D**.

17. Related Policies and Procedures

Safeguarding Vulnerable Groups Policy
 Recruitment and Selection Policy and Procedure
 Probation Policy and Procedure (in progress)

18. Further help and advice

Please contact [HR helpdesk](#) with any queries.

19. Policy Version and History

| Version No | Date of Approval | Approving Authority | Brief Description of Amendment |
|------------|------------------|---------------------|---|
| V. 1.1 | March 2020 | UE | <ul style="list-style-type: none"> Updated April 2020 to include new category requiring PVG Check minor amends to references to HR Team for clarification |
| | April 21 | | |

APPENDIX A- REGULATED WORK AND UNIVERSITY POSTS

The following list of posts are those that the University currently considers to be regulated work. The list is not exhaustive and it is important to continuously review the content of posts to assess whether they evolve into regulated work.

A PVG check **must be carried out for**:

- Student Counsellors
- Student Advisers
- Disability Advisers
- Education Liaison Officers
- Employees in Scholar
- Sports Scientists
- Sports Coaches
- Fitness Coaches
- Summer School employees
- Safeguarding Officers

A PVG Check **may be** required for:

- A small number of Academics and Researchers whose research **either in part or wholly** at any stage in their employment requires them to have access to either children and/or protected adults
- Student Recruitment (depending on their specific activity)

If the role does not fall under the definition of a PVG check, it may nevertheless be important to check whether or not the employee or applicant has a relevant criminal record. This is likely to be the case in a limited number of roles, such as Finance roles.

When amendments to the Disclosure Scotland Bill have been finalised and passed by Scottish Government, two schedule lists will be published detailing the criteria that needs to be met for PVG membership by individuals working with children and/or Protected Adults. This will replace the concept of “undertaking regulated work” with Regulated Roles that trigger mandatory PVG scheme membership.

The focus will be on establishing whether there is “contact” with a child or adult alongside the presence of specific activities within the role which in turn will determine the requirement for scheme membership.

APPENDIX B - PROTECTION OF VULNERABLE GROUPS RISK ASSESSMENT

SECTION A – THE POST

Post Title : School/Dept/Directorate :

Post Holder (*if known*)

SECTION B – COMMENCEMENT OF EMPLOYMENT: RISK ASSESSMENT

The membership process may take up to three weeks to complete. Do you anticipate the individual commencing in post before PVG Scheme clearance is received?

Yes/No

What are the consequences of any delay in the postholder starting work?

Following appointment, what exposure is the postholder likely to have to individuals under the age of 18 or Protected Adults over the age of 16?

What supervision arrangements do you intend to put in place to ensure the protection of individuals under the age of 18 or Protected Adults over the age of 16 whilst awaiting PVG clearance?

I confirm that the arrangements set out above will be put in place and accept responsibility for ensuring appropriate adjustments and supervision will be maintained.

Signed : Date:
(HoS/HoD/HoDir or relevant line manager)

SECTION C - AUTHORISATION

(To be completed by the Head of School/Head of Directorate/Secretary of University)

I confirm that : (please indicate)

- I grant approval for the appointee to take up the post prior to confirmation of Scheme membership being received on condition that the supervision arrangements detailed above are put in place and the line manager accepts responsibility for managing these arrangements.
- the appointee must not take up the post until confirmation of Scheme membership is received.

Signed : Date:

APPENDIX C- THE RECRUITMENT OF EX-OFFENDERS

The Code of Practice ("the Code") is published by Scottish Ministers under section 122 of Part V of The Police Act 1997 ("the 1997 Act"). The Code identifies obligations which registered bodies, counter-signatories and other recipients of disclosure information issued under the 1997 Act and the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act").

We comply with the Code, the 1997 and 2007 Acts regarding the treatment of individuals who are subject to Disclosure Scotland checks. We undertake not to discriminate unfairly against the subject of a disclosure on the basis of conviction or other information revealed.

Having a criminal record will not necessarily prevent an individual from working at Heriot-Watt University. This will depend on the nature of the position and the circumstances and background of the offence(s).

We are committed to equality of opportunity, and to following practices which are free from unfair and unlawful discrimination. We ensure that no applicant or member of staff is subject to less favourable treatment on the grounds of offending background. We welcome applications from a wide range of candidates, including those with criminal records and the selection of candidates for interview will be based on skills, qualifications and experience.

We will only use a Disclosure Scotland check where this is considered proportionate and relevant to the particular position or type of regulated work. This will be based on a thorough assessment of the position or work, and in consideration with the relevant legislation.

Where a disclosure application or request is deemed necessary, individuals will be made aware that the position or work will be subject to a Disclosure Scotland check and that the nature of the position or work entitles us to ask about spent and unspent convictions.

For the majority of posts, the University will only consider 'unspent' convictions as defined in the Rehabilitation of Offenders Act 1974. However where the post involves contact with children or Protected Adults, the University is entitled to consider the applicant's entire criminal record including unspent convictions and other relevant information obtained through the PVG Record Scheme check.

Where an applicant fails to reveal information that is directly relevant to the position sought, this may lead to withdrawal of an offer of employment. Action may also be taken under the appropriate procedures against an existing member of staff, where it is discovered that s/he has failed to reveal information directly relevant to the position held.

APPENDIX D - SECURE HANDLING, USE, STORAGE, RETENTION AND DESTRUCTION OF DISCLOSURE INFORMATION

Introduction

1. The Code of Practice ("the Code") is published by Scottish Ministers under section 122 of Part V of The Police Act 1997 ("the 1997 Act"). The Code sets out obligations for registered bodies, counter signatories and other recipients of disclosure information issued under the 1997 Act and the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act").

General Principles

2. We comply with the Code and the 1997 and 2007 Acts regarding the handling, holding, storage, destruction and retention of disclosure information provided by Disclosure Scotland. We comply with the Data Protection Act 2018 ("the 2018 Act"). We will provide a copy of this policy to anyone who requests to see it.

Usage

3. We will use disclosure information only for the purpose for which it was requested and provided. Disclosure information will not be used or disclosed in a manner incompatible with that purpose. We will not share disclosure information with a third party unless the subject has given their written consent and has been made aware of the purpose of the sharing.

Handling

4. We recognise that, under section 1241 of the 1997 Act and sections 66 and 67 of the 2007 Act, it is a criminal offence to disclose disclosure information to any unauthorised person. Disclosure information is only shared with those authorised to see it in the course of their duties. We will not disclose information provided under subsection 113B (5)2 of the 1997 Act, namely information which is not included in the certificate, to the subject.

Access and Storage

5. We do not keep disclosure information on an individual's personnel file. It is kept securely, in lockable, non-portable storage containers. Access to storage units is strictly controlled and is limited to authorised named individuals, who are entitled to see such information in the course of their duties.

Retention

6. To comply with the 2018 Act, we do not keep disclosure information for longer than necessary. For the 1997 Act, this will be the date the relevant decision has been taken, allowing for the resolution of any disputes or complaints. For the 2007 Act, this will be the date an individual ceases to do regulated work for this organisation. We will not retain any paper or electronic image of the disclosure information. We will, however, record the date of issue, the individual's name, the disclosure type and the purpose for which it was requested, the unique reference number of the disclosure and details of our decision. The same conditions relating to secure storage and access apply irrespective of the period of retention.

Disposal

7. We will ensure that disclosure information is destroyed in a secure manner i.e. by shredding, pulping or burning. We will ensure that disclosure information which is awaiting

destruction will not be kept in any insecure receptacle (e.g. a waste bin or unlocked desk/cabinet).

Umbrella Bodies

8. Before acting as an Umbrella Body (a body which countersigns applications for Standard or Enhanced Disclosures or makes declarations in relation to PVG disclosure requests on behalf of other organisations) we will take the following steps. We will ensure that the organisation on whose behalf we are acting complies with the Code and the 1997 and 2007 Acts. We will take all reasonable steps to satisfy ourselves that they will handle, use, store, retain and dispose of disclosure information in full accordance with this policy. We will also ensure that anybody or individual for whom applications or requests are countersigned, has such a written policy. If necessary, we will provide a model policy for that body or individual to use or adapt for this purpose.

1 The Serious Organised Crime and Police Act 2005 ("the 2005 Act") schedule 14, paragraph 12 amended sections 124

2 Subsection 163(2) of the 2005 Act inserted subsection 113B into the 1997 Act. Subsection 113B (5) of the 2005 Act replaces subsection 115(8) of the 1997 Act.