

Chapter 4: Retrospective Checking and Re-checking Policies

1. It is the Scottish Government's expectation that all individuals doing regulated work in Scotland should eventually become PVG Scheme members. Individuals recruited to do regulated work after the PVG Act comes into force should be asked to join the PVG Scheme. Over time, this will result in more and more individuals becoming PVG Scheme members. However, there are many individuals who will already be doing regulated work when the PVG Act comes into force and these people too will eventually join the PVG Scheme. The process of checking existing workers and bringing them onto the PVG Scheme is known as retrospective checking.

4.1 – Who should join?

2. From the go-live of the PVG Scheme, organisations should ask individuals being appointed to do regulated work to become PVG Scheme members. This is necessary to avoid the offence of offering regulated work to a barred person. Organisations should also continue with their existing re-checking policies in respect of individuals doing regulated work who are not PVG Scheme members. But organisations should not begin a new policy of retrospective checking of their workforce immediately.

4.2 – When should they join?

1 During the first year of the PVG Scheme's operation, scheme membership applications should primarily be made by those people who are taking up a new position involving regulated work.

2 After the first year, Disclosure Scotland will work with organisations to manage the process of introducing existing staff doing regulated work into scheme membership. This is expected to take a further three years and will be managed in such a way as to minimise the administrative burden on both organisations and allow Disclosure Scotland to maintain its service standards. The process of phasing in scheme membership will be managed by Disclosure Scotland in partnership with its registered persons and bodies.

4.3 – What happens to existing workers who are barred?

5. An individual who is doing regulated work when barred is committing an offence from the go-live of the PVG Scheme. If this comes to light through the

process of retrospective checking or otherwise the matter will be reported to the police and could lead to prosecution.

6. It is possible that, when some members of the existing workforce apply to join the PVG Scheme, this will reveal information which leads to a consideration for listing and, possibly, inclusion in one or both lists. The consequences of being under consideration for listing or listed are explained in chapters 7 and

8.

4.4 – How will retrospective checking be enforced?

1 From the start of the PVG Scheme, it is an offence for an organisation to recruit a barred individual to do regulated work. However, it is a defence for an organisation charged with such an offence to prove that it did not know, and could not reasonably be expected to have known, that the individual was barred from doing that regulated work.

2 It is also an offence for an organisation not to remove⁵¹ an individual from regulated work when told by Disclosure Scotland that they are barred⁵¹. But it is not an offence for an organisation to continue to employ a barred individual doing regulated work until such time as specified in the retrospective checking regulations. These regulations will be the subject of consultation in 2010-11 and can make different provision for different types of organisation and different circumstances. They will, in effect, set the time frame for organisations to get all their existing workers onto the PVG Scheme. The Scottish Government intends to set a four year time limit in these regulations but is considering a longer period for smaller organisations.

Case Study C4.1

Retrospective checking

A. I am a nurse working in a general hospital. Do I need to do anything now to comply with the Scheme?

B. No, there is no requirement for you to do anything immediately. If you change job in the near future you may be asked to join the Scheme at that stage. Alternatively, you will be asked to join the Scheme at some stage in the next few years when your employer undertakes retrospective checking. Your employer will provide the correct application form for you to complete at the appropriate time.

⁵¹

Provision for this is made in the Protection of Vulnerable Groups (Scotland) Act 2007 (Removal of Barred Individuals from Regulated Work) Regulations 2010 (SSI 2010/244).