



Queen Margaret University  
EDINBURGH

# Protection of Vulnerable Groups Policy

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## **Principles**

QMU is committed to providing a safe environment for its students, staff and wider community. Compliance with the Disclosure Scotland process and code of practice is vital to enhance safety by providing QMU with criminal checks and vetting information on individuals who we intend to employ.

## **Policy Aims**

The main aims of the policy are:

- To ensure QMU complies with the Disclosure Scotland process and code of practice by undertaking a PVG Scheme check on those staff employed to carry out regulated work.
- To ensure that QMU fully complies with the Data Protection Act 1998 and other relevant information pertaining to the safe handling, use, storage, retention and disposal of Disclosure information.
- To ensure that individuals who have a record of criminal conviction are dealt with consistently, fairly and in accordance with Disclosure Scotland guidelines, Rehabilitation of Offenders Act 1974, Police Act 1997, Protection of Vulnerable Groups (Scotland) Act 2007 and other relevant legislation.

## **Monitoring and Review**

Human Resources are responsible for monitoring the effectiveness of this policy and supporting procedures. The policy will be reviewed as required and in line with employment legislation.

## **Equal Opportunities**

QMU is committed to equality of opportunity for all staff and the terms of this policy and is designed to ensure the fair and transparent treatment for all staff irrespective of the equality characteristics or contractual status.

## **Learning and Development**

Human Resources will provide learning and development for all managers and staff involved in the implementation and application of this policy. This will be reviewed and extended in line with the on-going development of the policy.

## **Scope of the Policy**

This policy is relevant to all employees of the University and individuals offered employment into a post that is deemed by the University to be regulated work.

The University reserves the right to undertake Disclosure Scotland checks of any existing staff, at any time, where the nature of duties undertaken deems this necessary.

## **1.0 Disclosure Scotland**

Disclosure Scotland was established in 2002 and operates within the Scottish Criminal Record Office (SCRO) to provide a service designed to enhance public safety by providing potential employers and organisations within the voluntary sector in Scotland with criminal history information on individuals applying for posts. This service was established so that recruiters can make more informed decisions about people seeking positions where they may come into contact with children under 18 or other vulnerable members of society.

## **2.0 Legislation Summary**

### **2.1 Rehabilitation of Offenders Act 1974**

QMU actively promotes equality of opportunity for all with the right mix of talent, skills and potential, and welcomes applications from a wide range of candidates. The selection of candidates for interview will be based on skills, qualifications and experience.

The purpose of the Rehabilitation of Offenders Act 1974 is to ensure that those individuals with 'spent' convictions are protected, this includes when making an application for employment. A conviction is considered as 'spent' when the rehabilitation period has passed, the rehabilitation period varies depending on the offence committed. Prison sentences in excess of two and half year will never be considered 'spent' under the legislation. The University will ask all job applicants to disclose any unspent convictions at the point of recruitment.

### **2.2 Police Act 1997**

Part V of the Police Act 1997 is aimed at helping employers and other organisations assess the suitability of applicants for employment by widening access to criminal record information. To this end, the Act provides for the issue of criminal conviction certificates, criminal record certificates, and enhanced criminal record certificates.

The Police Act 1997 (Criminal Records) Regulations 2006 provides the definition of a vulnerable adult and a child care position for the purpose of obtaining a relevant disclosure certificate.

Basic disclosure certificates are still available from Disclosure Scotland that will provide information on any unspent criminal convictions.

Please consult Human Resources before deciding on the level of check required

### **2.3 Protection of Vulnerable Groups Act (Scotland) 2007**

The Protection of Vulnerable Groups Act (Scotland) 2007 introduces the Protection of Vulnerable Groups Scheme, which is intended to deliver on the provisions outlined in the Act, detailed below

- help to ensure that those who have regular contact with children and protected adults through paid and unpaid work do not have a known history of harmful behaviour

- be quick and easy to use, reducing the need for PVG Scheme members to complete a detailed application form every time a disclosure check is required
- strike a balance between proportionate protection and robust regulation and make it easier for employers to determine who they should check to protect their client group

### **3.0 Protection of Vulnerable Groups (PVG) Scheme**

The Protection of Vulnerable Groups Scheme was introduced in Scotland on 28<sup>th</sup> February 2010. The scheme will be introduced on a phased basis over four years. From 28<sup>th</sup> February 2011 only individuals recruited into the organisation to carry out regulated work will be required to join the scheme. Retrospective checking of current employees carrying out regulated work will take place throughout 2012/13.

The PVG Scheme, which will be managed by Disclosure Scotland is intended to strengthen safeguards for children and vulnerable adults. Individuals will only be able to join the PVG Scheme if they are suitable to work with vulnerable groups, those who are deemed not suitable, based on criminal record checks and vetting information will be refused entry to the scheme.

#### **3.1 Regulated Work**

There are two types of regulated work; regulated work with children and regulated work with adults. There are two types of regulated work because the legislation recognises that whilst an individual may be suitable for one type of regulated work they may be unsuitable for the other. (See section 3.3 Lists and Consideration for Listing)

It is an offence for an individual to do; or seek to do regulated work for which they are barred. It is also an offence for an organisation to knowingly recruit an individual to do regulated work for which they are barred.

Disclosure Scotland does not provide a list of positions which constitute regulated work, it is the responsibility of the University to determine, within the guidance given, if an individual is or will be carrying out regulated work.

The legislation defines regulated work with reference to (i) the activities an individual does (ii) the establishment in which a person works (iii) the position that they hold and (iv) or the people for whom they have day to day supervision for.

Human Resources will advise at the start of the recruitment process, in consultation with the appropriate manager, whether the post holder will be carrying out regulated work.

Where there is a requirement for the post holder to be a member of the PVG Scheme this will be stated on the job description which is available to all applicants during the recruitment process.

Any offers of employment for regulated positions will be subject to membership of the PVG scheme. In cases where the successful applicant is already a member of the PVG Scheme offers of employment will be subject to sight of the individuals Scheme Record and satisfactory Scheme Record Update. Individuals will not be able to commence employment with the University until this process is complete.

### 3.2 Effective Barring

Under PVG legislation Disclosure Scotland are not only collecting vetting information to pass onto employers they are making decisions in relation to individual's suitability for membership of the PVG Scheme.

Individuals deemed to be unsuitable for regulated work will be barred from membership of the PVG Scheme. They will be placed on either the list of individuals unsuitable to work with children or individuals unsuitable to work with vulnerable adults as appropriate.

### 3.3 Lists and Consideration for Listing

The PVG Act requires there to be two lists; one listing all those unsuitable to work with children and the other listing all those unsuitable to work with vulnerable adults. Inclusion on either list is the outcome of the consideration for listing process whereby Disclosure Scotland deems that the individual in question is not suitable to work with children and/or vulnerable adults. Once an individual is listed they will be barred from carrying out regulated work with one or both groups.

In some cases individuals will be barred from working with one group but not the other. In this case the Scheme Record will only include information relating to the type of regulated work applied for (either regulated work with vulnerable adults or regulated work with children) and will not inform the University that the individual is barred from carrying out regulated work with the other group. However the record may show the information that led to the individual being barred from working with one of the groups i.e. a conviction. In this case the University can take this information into account when deciding whether to employ the individual.

### 3.3 PVG Scheme Membership and Records

Where an individual is deemed to be carrying out regulated work either when recruited by the University or during retrospective checking they will be asked to complete the PVG Scheme Membership Application Form.

A Scheme Record will be sent to both the Registered Body (the University) and the individual, the Scheme Record will detail any relevant conviction and/or vetting information.

Where an individual is not able to join the PVG Scheme the University and the individual will be sent a letter confirming that the individual is barred from joining the PVG Scheme. Where this circumstance arises this should be discussed with the individual and the offer of employment withdrawn.

Where the individual is under consideration for listing they will still receive a Scheme Record however it will state that they are under consideration for listing. In such cases the appropriate course of action should be discussed and agreed with Human Resources.

Where an applicant is appointed to a position within the University that *is not* considered to be regulated work but they are already a member of the PVG Scheme and have joined the scheme within the previous three months Human Resources will

require to see their most recent Scheme Record. In this case the University will not carry out a basic disclosure check.

Where an applicant is appointed to a position within the University that is considered regulated work Human Resources will require to see their most recent Scheme Record. The University will also request a Scheme Record update from Disclosure Scotland.

Where a Scheme Record Update shows a change from when the last Scheme Record was issued the University will request a full Scheme Record from Disclosure Scotland.

The cost of joining the PVG Scheme will be covered by the University.

The information on the Scheme Record/Scheme Record Update is personal and the University may not share the information without the consent of the individual.

### **3.4 Continuous Updating**

Once the University has requested either a Scheme Record or Scheme Record Update Disclosure Scotland will consider that the University has an interest in the individual for which the membership or update application has been made. If there is any change to vetting information or the individual comes under consideration for listing the University will be notified.

Where an update is received from Disclosure Scotland the University may request a further Scheme Record for the individual in question.

### **4.0 Casual Staff and Consultants**

From time to time it may be necessary to engage or employ an individual to undertake work on a very short term or ad hoc basis. This can often be at short notice and for a period of a few hours or days (e.g. Visiting Lecturer).

Where casual staff are being employed to carry out regulated work they must join the PVG Scheme or supply their most recent Scheme Record. The University may wish to request a Scheme Record Update for any member of casual staff that is carrying out regulated work.

### **5.0 Making a Referral to Disclosure Scotland**

Under the PVG legislation the University has an obligation to inform Disclosure Scotland if it is felt an individual has become unsuitable to carry out regulated work. The process of providing this information to Disclosure Scotland is called 'making a referral'.

The University has a duty to make a referral when the following criteria is met (a) an individual doing regulated work has done something to harm a child or protected adult and (b) the impact is so serious that the University has (or would) permanently remove the individual from regulated work.

Making a referral regarding an individual to Disclosure Scotland is very serious, further guidance about the criteria for making a referral and the process is available from Human Resources.

## **6.0 Appeals Process**

There can be no appeal made to the University where membership of the PVG Scheme has been declined by Disclosure Scotland, in such cases the individual should make an appeal directly to Disclosure Scotland.

An appeal against a decision in connection with issue(s) highlighted in a PVG Scheme Record should be made in writing to Human Resources. Appeals will be considered by an Appeals Panel, appointed by Human Resources. No members of the Appeals Panel will have had previous involvement in the case.

The Appellant will have the opportunity to make representations in person, accompanied by a trade union representative or work colleague. The decision of the Appeals Panel will be final.

## **7.0 Secure handling, use, storage and retention of Disclosure information**

### **7.1 General Principles**

QMU complies fully with the Code of Practice, issued by Scottish Ministers, regarding the correct handling, holding and destroying of Disclosure information provided by Disclosure Scotland under Part V of the Police Act 1997 (“the 1997 Act”), for the purposes of assessing applicants' suitability for employment purposes, voluntary positions, licensing and other relevant purposes. It also complies fully with the Data Protection Act 1998 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information and has a written policy on these matters. This policy is available to anyone who wishes to see it on request.

### **7.2 Usage**

We use Disclosure information only for the purpose for which it has been provided. The information provided by an individual for a position within QMU is not used or disclosed in a manner incompatible with the purpose. We process personal data only with the express consent of the individual. We notify the individual of any non-obvious use of the data, including further disclosure to a third party, identifying the Data Controller, the purpose for the processing, and any further relevant information.

### **7.3 Handling**

QMU recognises that, under section 124<sup>1</sup> of the 1997 Act, it is a criminal offence to disclose Disclosure information to any unauthorised person. We, therefore, only pass Disclosure information to those who are authorised to see it in the course of their duties. QMU will not disclose information provided under subsection 113(B)(5)<sup>2</sup> of the 1997 Act, namely information which is not included in the Disclosure, to the applicant.

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<sup>1</sup> The Serious Organised Crime and Police Act 2005 (“the 2005 Act”) Schedule 14, Paragraph 12 amended section 124

<sup>2</sup> 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.



#### **7.4 Access and Storage**

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 to authorised and named individuals, who are entitled to see such information in the course of their duties.

#### **7.5 Retention**

We do not keep Disclosures or Disclosure information for any longer than is required after recruitment (or any other relevant) decision has been taken. In general, this is no longer than 90 days. This is to allow for the resolution of any disputes or complaints. Disclosure information will only be retained for longer than this period in exceptional circumstances which justify retention for a longer period. The same conditions relating to secure storage and access will apply during any such period.

#### **7.6 Disposal**

Once the retention period has elapsed, we will ensure that Disclosure information is immediately destroyed in a secure manner i.e. by shredding, pulping or burning. QMU will ensure that Disclosure information which is awaiting destruction will not be kept in any insecure receptacle (e.g. a waste bin or confidential waste sack). We will not retain any image or photocopy or any other form of the Disclosure information. We will, however, keep a record of the date of issue of the Disclosure, the name of the subject, the Disclosure type, the position for which the Disclosure was requested, the unique reference number of the Disclosure and details of the recruitment decision taken.

**February 2011**

**Responsibility for Policy  
Human Resources**