

XVI SAFEGUARDING ACT (ACT XVI 2018)

Edinburgh, 22 May 2018, Session 12

The General Assembly enact and ordain as follows:

Definitions

1. In this Act, the following words shall have the following meanings:
 - (1) “Applicant” means any person applying to undertake or carry out Regulated Work, whether in a paid or voluntary position.
 - (2) “Charge” means a sphere of pastoral duty to which a Parish Minister is (i) inducted, or (ii) introduced under the arrangements set out in the Ministerial Staffing in the Presbytery of Shetland Regulations (Regs VI 2007).
 - (3) “Children” means persons under the age of 18 years.
 - (4) “Consideration for Listing” means the process at Disclosure Scotland whereby a person is being considered for listing as unsuitable for carrying out Regulated Work with Vulnerable Groups.
 - (5) “Covenant of Responsibilities” means a covenant entered into between a Subject and a Safeguarding Panel on behalf of a Kirk Session(s) in the form prescribed from time to time by the Safeguarding Service.
 - (6) “Data Protection Policy” means the Data Protection Policy of the Church of Scotland Central Services Committee as that policy exists from time to time.
 - (7) “Data Retention Policy” means the Data Retention Policy of the Church of Scotland Central Services Committee as that policy exists from time to time.
 - (8) “Decision to list” means a decision by Disclosure Scotland to place a person on any of the lists of persons barred from carrying out Regulated Work with Vulnerable Groups.
 - (9) “Disclosure Scotland” means the Scottish Government executive agency which manages and delivers the PVG Scheme.
 - (10) “Employing Agencies” means for the purposes of this Act, courts of the Church and Councils and Committees of the General Assembly, and any other bodies so designated by the General Assembly.
 - (11) “Guidance” means the Guidance published by the Safeguarding Service from time to time.
 - (12) “Listed” means that a person has been placed on any of the lists of persons barred from carrying out Regulated Work with Vulnerable Groups, noting that a person may be barred from working with Children, or with Protected Adults, or from working with both Children and Protected Adults.
 - (13) “Parish Minister” means a Minister of Word and Sacrament (i) inducted by a Presbytery to a Charge or (ii) introduced to a Charge under the arrangements set out in the Ministerial Staffing in the Presbytery of Shetland Regulations (Regs VI 2007).
 - (14) “Protected Adults” means a person over 16 years of age, who because they receive a certain type of service, become protected. These services are likely to be provided for people affected by physical or mental illness and/or disability, who have particular needs over and above those of the general population.

- (15) "PVG Act" means the Protection of Vulnerable Groups (Scotland) Act 2007 or any subsequent modification, amendment or re-enactment thereof.
- (16) "PVG Scheme Record" means the record that a person receives when they join the PVG Scheme.
- (17) "PVG Scheme Record Update" means an update from Disclosure Scotland of information contained in a PVG Record.
- (18) "PVG Scheme" means the scheme legislated for by the PVG Act which is intended to ensure that people whose behaviour makes them unsuitable to work with Vulnerable Groups cannot undertake Regulated Work.
- (19) "Recruitment Sub-Committee" means a sub-committee of the Safeguarding Committee which meets to consider information contained in a Self Declaration Form, and/or in a PVG Scheme Record and/or to consider any notifications from Disclosure Scotland and/or any other matters related thereto.
- (20) "Registered Sex Offender" means a person who is required to register with the Police in terms of the Sexual Offences Act 2003 or any subsequent modification, amendment or re-enactment thereof.
- (21) "Regulated Work" has the meaning given to it in the PVG Act and can be found set out in full in a Schedule to the Guidance.
- (22) "Responsible Authorities" means the Police, Local Authorities, Health Boards, Special Health Boards and the Scottish Prison Service.
- (23) "Safeguarding" includes but is not limited to (1) taking measures to protect the health, wellbeing and human rights of individuals, especially Vulnerable Groups, which allow them to live their life free from harm, abuse or neglect and (2) responding appropriately to Safeguarding Concerns.
- (24) "Safeguarding Committee" means the committee (or any successor body) appointed by the General Assembly to deal with Safeguarding matters in the Church.
- (25) "Safeguarding Concerns" means concerns about, or allegations of, harm, abuse or neglect.
- (26) "Safeguarding Coordinator" means a person appointed by the Kirk Session(s) to have responsibility for Safeguarding within a Charge.
- (27) "Safeguarding Panel" means a panel of at least three persons appointed by the Kirk Session(s) as responsible for Safeguarding in a Charge, and will always include the Safeguarding Coordinator; from time to time additional persons may be co-opted onto a Safeguarding Panel.
- (28) "Safeguarding Service" means the Church's department providing advice, support and action to Safeguarding Coordinators, Kirk Sessions, Presbyteries and others on Safeguarding matters.
- (29) "Self Declaration Form" means the form¹ in such terms as may be prescribed by the Safeguarding Service from time to time, which form is to be completed by an Applicant for the following purposes: providing information to the Safeguarding Service, stating information which might appear on the Applicant's PVG Scheme Record and undertaking to inform the Safeguarding Service of certain matters.

¹ Currently Form SG3

(30) "Subject" means

- (i) Any person who has been convicted of any offence within the Sexual Offences (Scotland) Act 2009 or associated legislation (or any modification, replacement or re-enactment thereof); and/or
- (ii) Any person who has been convicted of any other sexual offence;
- (iii) Any person who admits to having committed a sexual offence; and/or
- (iv) Any person who is currently or who has at any time been a Registered Sex Offender; and/or
- (v) Any person in respect of whom the Safeguarding Service receives a notification from any of the Responsible Authorities that such person poses a risk of harm.

(31) "Vulnerable Groups" means Children and/or Protected Adults.

(32) "Worker" means any person undertaking Regulated Work, whether in a paid or voluntary position.

Interpretation

- 2. (1) Whenever "Vulnerable Groups" are referred to in this Act, that may be a reference to either Children or Protected Adults, or to Children and Protected Adults.
- (2) The footnotes in this Act are for information only and do not form part of this Act.
- (3) The Safeguarding Service shall be entitled to amend any form referred to in this Act as it deems appropriate from time to time.

Safe Recruitment – Kirk Session(s)

- 3. (1) Subject to subsection (6) below, the Kirk Session(s) shall ensure that all Workers within the Charge are members of the PVG Scheme, prior to taking up their post.
- (2) Subject to subsection (6) below, whenever a person is being recruited and will be undertaking Regulated Work, that person must make application to become a member of the PVG Scheme. If the person is already a member of the PVG Scheme, an Existing PVG Scheme Member Application must be completed and submitted. No person may be employed or appointed to undertake or to carry out Regulated Work unless that person is a member of the PVG Scheme.
- (3) The Kirk Session(s) shall appoint a Safeguarding Coordinator. The Safeguarding Coordinator shall have the task of ensuring that all PVG applications required for that Charge are completed accurately and submitted to the Safeguarding Service for processing. The Safeguarding Coordinator shall monitor the return of the applications and their outcome.
- (4) Subject to subsection (6) below, if any application results in notification that a person is barred from becoming a member of the PVG Scheme, ie is Listed, that person must not be employed or appointed to undertake or to carry out Regulated Work. It is an offence under the PVG Act to employ or appoint a person who is Listed to undertake or to carry out Regulated Work.

- (5) In arranging recruitment, the Kirk Session(s) must comply with the Guidance.
- (6) In addition, in the case of a person who is domiciled outwith the UK, such further information must be provided and such further checks must be undertaken, both as the Safeguarding Service may require, before that person may be employed or appointed to undertake or to carry out Regulated Work.

Safe Recruitment – Presbyteries and other Employing Agencies

- 4. (1) Subject to subsection (5) below, Presbyteries and other Employing Agencies shall ensure that all Workers are members of the PVG Scheme, prior to taking up their post.
- (2) Subject to subsection (5) below, whenever a person is being recruited and will be undertaking Regulated Work, that person must make application to become a member of the PVG Scheme. If the person is already a member of the PVG Scheme, an Existing PVG Scheme Member Application must be completed and submitted. No person may be employed or appointed to undertake or to carry out Regulated Work unless that person is a member of the PVG Scheme.
- (3) Subject to subsection (5) below, if any application results in notification that a person is barred from becoming a member of the PVG Scheme, ie is Listed, that person must not be employed or appointed to undertake or to carry out Regulated Work. It is an offence under the PVG Act to employ or appoint a person who is Listed to undertake or to carry out Regulated Work.
- (4) In arranging recruitment, Presbyteries and other Employing Agencies must comply with the Guidance.
- (5) In addition, in the case of a person who is domiciled outwith the UK, such further information must be provided and such further checks must be undertaken, both as the Safeguarding Service may require, before that person may be employed or appointed to undertake or to carry out Regulated Work.

Recruitment Sub-Committee

- 5. (1) At its meetings, the Recruitment Sub-Committee shall deal with the risk assessment of the following:
 - (i) Any vetting information which has been provided to the Safeguarding Service by Disclosure Scotland.
 - (ii) Any notification received by the Safeguarding Service from Disclosure Scotland, including a notification that a person is under Consideration for Listing.
 - (iii) Self Declaration Forms, references, matters of reputational risk and any other pertinent information.
- (2) The Recruitment Sub-Committee may decide (one or more of the following):
 - (a) *In relation to safe recruitment:*

- (i) To recommend that a person is suitable for Regulated Work (which recommendation may or may not be made subject to conditions).
 - (ii) To recommend that a person is not suitable for Regulated Work.
- (b) *In relation to a notification from Disclosure Scotland:*
- (i) To take no action.
 - (ii) To impose a precautionary administrative suspension, to be reviewed by the Sub-Committee on a three monthly rolling basis.
 - (iii) To take no immediate action but to reconsider the matter at a further meeting on a date within the next three months.
 - (iv) To recommend that a person is not suitable for Regulated Work.
- (3) Decisions of the Recruitment Sub-Committee shall be notified to the person involved and to the relevant Safeguarding Coordinator. Notification shall include a statement of the reasons for the decision.
- (4) Subject always to any appeal in terms of section 6 below, where the Recruitment Sub-Committee makes a decision in terms of section 5(2)(a)(ii) or 5(2)(b)(iv), no Employing Agency shall employ or appoint that person to undertake or to carry out Regulated Work.

Appeals from decisions of the Recruitment Sub-Committee

6. (1) A person in respect of whom a decision has been made in terms of section 5(2)(a)(ii) or 5(2)(b)(iv) as to suitability for Regulated Work has the right to appeal that decision. A person may also appeal against the terms of any conditions applied by the Recruitment Sub-Committee in terms of section 5(2)(a)(i) as to a person's suitability for Regulated Work. Such a person is referred to in section 7 as "the Appellant".
- (2) An appeal can be brought only on one or more of the following grounds:
- (a) that there were irregularities in the process whereby the Recruitment Sub-Committee reached its decision
 - (b) that the final decision of the Recruitment Sub-Committee was influenced by incorrect material fact (subject however to the exception noted below in regard to the contents or accuracy of the PVG Scheme Record), or
 - (c) that the Recruitment Sub-Committee in reaching its decision acted contrary to the principles of natural justice.
- (3) Any disagreement as to the contents or accuracy of the PVG Scheme Record information itself cannot be the subject of an appeal under this procedure and will require to be taken up by the person direct with Disclosure Scotland through the procedures established by that body.

Process for Appeal

7. The appeal shall proceed as follows:
- (1) The intention to appeal must be intimated to the Principal Clerk by the Appellant within fourteen days of the date of issue of the relevant decision.

- (2) Within a further twenty eight days after the date upon which the intention to appeal was intimated in terms of section 7(1), the Appellant shall lodge with the Principal Clerk a note setting out in writing in brief numbered propositions, the grounds referred to in section 6(2) above upon which he or she is appealing (“the Grounds of Appeal”).
- (3) Upon receipt of the Appellant’s Grounds of Appeal, the Principal Clerk shall require that within twenty eight days, the Recruitment Sub-Committee lodge a note responding to the Grounds of Appeal.
- (4) The appeal will be determined by an Appeal Group comprising three persons selected by the Principal Clerk from the Safeguarding Appeal Panel. The Safeguarding Appeal Panel shall be a Panel of six persons appointed by the General Assembly, being persons with Safeguarding and other relevant experience, and shall include at least two persons who shall be qualified to practise as lawyers or who are experienced in the law and practice of the Church, and at least two ministers. Having due regard to the need to ensure independent scrutiny of any appeal, none of the Panel shall be current or former employees of any of the Employing Agencies nor shall they be current members of the Safeguarding Committee.
- (5) The Appeal Group will be chaired by a person who is either qualified to practise as a lawyer or who is experienced in the law and practice of the Church. The Appeal Group shall include at least one minister. The Appeal Group will be clerked by the Principal Clerk or the Depute Clerk.
- (6) The Appeal Group shall be entitled to require both the Appellant and the Recruitment Sub-Committee to provide further information and may determine the appeal either on the basis of written submissions only and/or by holding a hearing. If a hearing is held, procedure shall be in accordance with the Standing Orders of the General Assembly so far as applicable and consistent with this Act.
- (7) The Appellant will be notified of the Appeal Group’s decision in writing within six weeks of the written submissions being received by the Principal Clerk or of the hearing date, whichever is later.
- (8) The Appeal Group will also notify the Safeguarding Service and the Recruitment Sub-Committee of its decision. The Safeguarding Service will take any necessary action, in accordance with the Appeal Group’s decision.
- (9) The decision of the Appeal Group will be final.

Training

8. (1) Each Presbytery shall provide appropriate training on Safeguarding matters to Kirk Sessions, Safeguarding Coordinators and Workers, with updates when appropriate.
- (2) Kirk Sessions will maintain records of all training undertaken by Kirk Sessions, Safeguarding Coordinators and Workers and will disclose these records at any time upon request by the Safeguarding Service or the Presbytery.
- (3) All Kirk Sessions, Safeguarding Coordinators and Workers must undertake such training as is prescribed by the Safeguarding Service from time to time.

Record retention

9. (1) The Safeguarding Panel will maintain records of Workers within the Charge who are PVG Scheme members in the form of the Safeguarding Congregational Register².
- (2) All hard copy records of the Safeguarding Panel shall be kept confidentially in a secure place.
- (3) In accordance with the Data Protection Policy and the Data Retention Policy, the Safeguarding Service will retain originals of the Self Declaration Forms which are signed by all Applicants either (1) to join the PVG Scheme or (2) for an Existing PVG Scheme Member Application. Documents shall be destroyed only in accordance with the Data Retention Policy.

Presbyteries' Responsibilities of Superintendence

10. Presbyteries shall confirm that Kirk Sessions are complying with their obligations under this Act: (1) during Annual Inspections of Records, and (2) as part of Local Church Review, and shall report to the Safeguarding Service in such form as the Safeguarding Service may prescribe from time to time.

Audit

11. Kirk Sessions and Presbyteries shall review and minute on an annual basis their compliance with Safeguarding policies and procedures using the Safeguarding Audit Checklist for Kirk Sessions and Presbyteries³.

Annual Inspection of Records

12. Kirk Sessions shall submit the Safeguarding Congregational Register⁴ and the Safeguarding Audit Checklist for Kirk Sessions and Presbyteries⁵ annually to Presbytery as part of the Annual Inspection of Records.

Obligations on individuals

13. (1) All PVG Scheme members shall advise Disclosure Scotland and the Safeguarding Service promptly of any changes to their personal details.
- (2) All PVG Scheme members shall advise Disclosure Scotland and the Safeguarding Service promptly if they cease doing Regulated Work for the Church of Scotland.

² Currently Form SG7

³ Currently Form SG11

⁴ Currently Form SG7

⁵ Currently Form SG11

- (3) All PVG Scheme members must advise the Safeguarding Service promptly of (i) any act, default or omission, or (ii) any circumstances arising, which might affect whether they can undertake Regulated Work.
- (4) All persons who sign Self Declaration Forms must adhere to the undertakings given therein.

Workers – Safeguarding Concerns

14. (1) Every Charge must have a Safeguarding Panel.
- (2) If any Safeguarding Concerns arise regarding Workers, such Safeguarding Concerns shall be reported without delay by the Safeguarding Coordinator to the Safeguarding Panel and to the Safeguarding Service. The Safeguarding Service shall where appropriate report the matter to Disclosure Scotland.
- (3) Nothing in this Act shall detract from the general responsibility of all persons promptly to report any Safeguarding Concerns to the Safeguarding Service.

Safeguarding in the Presbyteries of England, International Charges and Jerusalem

15. Kirk Sessions in the Presbyteries of England, International Charges and Jerusalem will follow the recommendations and advice of the Safeguarding Service.

Other services provided by Safeguarding Service

16. The Safeguarding Service may from time to time with the approval of the Council of Assembly enter into arrangements with other churches, agencies and groups as to the provision of Safeguarding services to them.

Management of Subjects (Covenants of Responsibilities)

17. (1) Whenever a Subject wishes to be involved in the life of a congregation, then the following shall apply:
 - (i) the Safeguarding Coordinator shall inform the Safeguarding Service (in turn, the Safeguarding Service shall inform the Safeguarding Coordinator if such information comes to its notice);
 - (ii) a Covenant of Responsibilities shall be entered into by the Safeguarding Panel on behalf of the relevant Kirk Session(s) with the Subject.
- (2) If the Subject refuses to sign a Covenant of Responsibilities, then the Subject shall not be entitled to be involved in the life of the congregation.
- (3) The terms of the Covenant of Responsibilities shall be determined by the Safeguarding Service in consultation with the Safeguarding Panel of the relevant Kirk Session(s) and, where appropriate, the Responsible Authorities, in accordance with the Safeguarding Service's procedures from time to time. The Subject shall have no input into the drafting of the Covenant of Responsibilities, which shall not be negotiable by the Subject. The Covenant shall provide for its

regular review and this shall be implemented according to the procedures from time to time of the Safeguarding Service.

- (4) A Covenant of Responsibilities is specific to a congregation and is not transferable to a different congregation. Should the Subject wish to be involved in the life of another congregation then a new Covenant of Responsibilities shall require to be entered into and the preceding provisions of this section 17 shall apply. In addition the terms of the Covenant to be entered into in respect of the new congregation may be determined in consultation with the Safeguarding Coordinator of the former congregation.

Consequential amendments

18. (1) This Act shall be added to the list of Acts in the Schedule to the Alternative Dispute Resolution Processes Act (Act VI 2014), as being an Act in respect of which ADR shall not be used.
- (2) The Protection of Vulnerable Groups Act (Act VII 2011) as amended shall be repealed.

Act to prevail

19. From its date of passing, the terms of this Act shall prevail where those are inconsistent with any previous deliverances of the General Assembly.