

Safeguarding and Safer Recruitment

Guidance for organisations
in England and Wales



Introduction

Safe recruitment practices should form part of your safeguarding policy. Every organisation that has a safeguarding exposure, which includes many charities, town and parish councils, and community organisations, needs to have arrangements in place to effectively manage safer recruitment processes.

However, many organisations find aspects of safer recruitment confusing and challenging, such as understanding what constitutes ‘regulated activity’ and the different levels of DBS checks for staff and volunteers.

This guidance is designed to help organisations better understand their responsibilities and implement safer recruitment practices.

DBS checks: the essentials

Understanding when to request a DBS check (and at what level) is an area that often causes difficulty. Depending on your type of organisation, you may have contact with children and/or adults-at-risk (also known as vulnerable adults), through the nature of the services you provide.

If your organisation engages any individual to have contact with either or both of these vulnerable groups, then you should be conducting a risk assessment and obtaining an appropriate level of DBS check (later in this guide we will explain the different levels of check in more detail).

Keeping clear and detailed records of your decision-making processes with regards to DBS checks is also very important. You should be able to

show that your decisions are based on a clear understanding of the level of contact individuals will have with vulnerable people.

Particular requirements for regulated activity

It is especially important to evidence your decisions regarding those involved in regulated activity. In this guide we will cover what constitutes regulated activity for both children and adults-at-risk.

Firstly, organisations should be aware that it is illegal to engage in regulated activity any individual – whether a paid member of staff or volunteer – who is barred from working with vulnerable groups. The only way to determine this is by obtaining the highest level of DBS check – an Enhanced with Barred List check.

However, you may have other individuals in your organisation who do not engage in regulated activity, but may still require a DBS check at a different level. It is therefore very important to understand what constitutes ‘regulated activity’ and when you need to consider a DBS check.

You may need to seek a check of both adult and children’s barred lists if you have contact with both of these vulnerable groups.



Regulated activity relating to children

Depending on the types of service your organisation provides, you may undertake a variety of regulated activity. Some types of work with children are always classed as regulated activity, while other types are only considered regulated activity in certain circumstances.

The following categories of activity are automatically considered regulated activity where they apply to children:

- **Relevant personal care** – for example, washing or dressing, or healthcare by, or supervised by, a professional.
- **Registered child-minding, and foster carers.**

The following types of work are considered a regulated activity only if conducted regularly.

- **Unsupervised activities** – such as teaching, training, instructing, caring for, or supervising children, or providing advice/guidance on well-being, or driving a vehicle only for children.
- **Work for a limited range of ‘specified places’, with opportunity for contact** – for example, schools, children’s homes and childcare premises. This does not include work by supervised individuals.



What is the definition of ‘regular’ work?

Regular work is generally defined as that carried out by the same person at least once a week, or on four or more days in any 30-day period. It also includes any activity undertaken overnight (regardless of how often this occurs).

What types of work are not considered regulated activity?

It’s equally important to understand what does not constitute regulated activity, in order to avoid initiating a DBS check where it is not appropriate to do so.

Regulated activity does not include:

- Family arrangements and personal, non-commercial arrangements.
- Work by ‘supervised’ individuals, i.e. employees or volunteers. However, the person who is the supervisor must themselves be someone in regulated activity, i.e. that which is regular and day-to-day; and the supervision they provide must be “reasonable in all the circumstances to ensure the protection of children”.



Regulated activity relating to adults-at-risk

The following six categories are considered regulated activity where they relate to adults-at-risk.

✓ Healthcare

This includes any healthcare professional providing healthcare or anyone providing healthcare under the direction or supervision of a healthcare professional.

✓ Social work

This applies to any social work which is required in connection with any healthcare or social services to an adult-at-risk who is a client or potential client.

✓ Assistance with cash, bills and/or shopping

This applies where assistance includes managing the person's cash, paying their bills, or shopping on their behalf.

✓ Assistance in the conduct of a person's affairs

Anyone who provides various forms of assistance in the conduct of an adult at risk's own affairs, for example, by virtue of a lasting power of attorney (LPA).

✓ Conveying

This includes anyone who will be transporting an adult-at-risk either to, from or between places where they have received, or will be receiving, healthcare, personal care, or social care.

✓ Personal care

This applies to anyone who:

- Provides physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care, or care of the skin, hair, or nails.
- Prompts and then supervises an adult-at-risk who cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair, or nails without that prompting or supervision.
- Trains, instructs, or offers advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails, to an adult-at-risk.

As with children, regulated activity relating to adults-at-risk does not include:

- Family arrangements and personal, non-commercial arrangements.
- Work by 'supervised' individuals.

Further information on regulated activity:

- [Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012](#)
- [Health and Social Care Act 2008 \(regulated activity\) regulations 2014](#)
- [Care Act 2014](#)



Disclosure and Barring Service (DBS) checks

The Disclosure and Barring Service (DBS) was created in 2012 following a merger of the Criminal Records Bureau and the Independent Safeguarding Authority.

The DBS enables organisations, including charities, town and parish councils, and community organisations, to make safer recruitment decisions. It helps to identify candidates who may be unsuitable for certain work, especially those involved with children

and adults-at-risk, by providing wider access to criminal record information through its disclosure service for England and Wales.

Scotland and Northern Ireland have their own versions of DBS which follow similar principles: Disclosure Scotland and AccessNI. Disclosure Scotland provide information solely for Scotland, whereas AccessNI work in partnership with DBS England to provide disclosures for England, Wales and Northern Ireland.



What does the DBS do?

- Processes requests for criminal records checks (DBS checks).
- Decides whether it is appropriate for a person to be on a barred list or not.
- Places people on, or removes them from, the DBS children's barred list and adults' barred list for England, Wales, and Northern Ireland.

Criminal record data is provided via a DBS Certificate aka DBS check (previously a CRB check).

The DBS do not maintain records for Scotland; Disclosure Scotland must be contacted as an alternative.





The 4 levels of DBS check

It is important to understand the circumstances in which each of the following types of check is appropriate.

1 A basic DBS check

This shows unspent convictions and conditional cautions

2 Standard DBS check

This shows spent and unspent convictions, cautions, reprimands, and final warnings, and is mainly for positions of high responsibility (for example, accountancy and security).

You should note that, in the context of safeguarding, neither a basic or a standard DBS check is appropriate for roles involving contact with vulnerable groups, i.e. children and/or adults-at-risk.

The following link contains [official guidance on the difference between spent and unspent convictions.](#)

3 Enhanced DBS check

From a safeguarding perspective, enhanced DBS checks are appropriate for positions involving activities such as:

- Frequently caring for, training, supervising or being solely in charge of children.
- Specified activities with adults-at-risk in receipt of healthcare or social care services.

In addition to the information provided on a Standard check, the Enhanced check involves an additional check with the police, who will look for any other information held on file that may be relevant to the role being applied for (e.g. information that has not led to a criminal conviction but may indicate a danger to vulnerable groups, such as domestic abuse).

The police will decide what additional information (if any) should be added to the certificate.

4 Enhanced with Barred List checks

This includes all checks provided for an Enhanced check, plus a check of the appropriate DBS Barred List. There are separate DBS Barred Lists for adults-at-risk and children.

These lists contain information on whether the applicant is barred from working with either of the two groups. An individual may only be checked against one or both barred lists if their job role is classified as a 'regulated activity' with children and/or adults-at-risk, or if they are working in one of the small number of positions listed in the Police Act 1997 (Criminal Records) regulations, such as prospective adoptive parents, or taxi and private hire vehicle (PHV) licensees.

Organisations should be aware it is a criminal offence to engage in regulated activity anyone who is barred from that activity.





Who can apply for a DBS check?

DBS checks cannot be obtained by members of the public who want to find out about another person's criminal background. Equally, job applicants cannot do a DBS check on themselves.

For organisations, it is important to be sure you are legally entitled to ask an individual to reveal their criminal history. This entitlement applies only when the individual will be working in specific occupations, for certain licences and specified positions (as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975).

If you are still unsure whether a role is eligible for a Standard or Enhanced DBS check, the following [government guidance on DBS check eligibility](#) can help.

Recruiting applicants from overseas



If you are considering recruiting overseas applicants, it is important to be aware that the DBS cannot access criminal records held overseas for individuals who are not British citizens.

You will therefore need to think about alternative ways of mitigating the potential risks and checking the applicant is suitable for the role.

One way would be to obtain a Certificate of Good Character from the individual's country of origin, although these should be treated with a degree of caution, as the standard of police checks will vary from country to country, and often these checks will be less detailed than a DBS check.

The government has published country-by-country guidance on applying for [criminal records checks for overseas applicants](#).



DBS checks: further considerations

If an individual you are considering recruiting will be working in a specific occupation, for certain licences or in a specified position (as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975) then you are legally entitled – and indeed obliged – to request a DBS check on that person.

The level of check required will depend on the type of work and the context in which it is carried out. If the individual – whether employee or volunteer – is performing any type of regulated activity, they will need to be DBS checked to Enhanced with Barred List level.

For those not conducting regulated activity, but who will have ‘frequent’ contact (not ‘regular’ contact, which has a

different meaning in this context) with vulnerable people for the purpose of caring for, training, supervising or being solely in charge of them, then you should seek a DBS check to Enhanced level. This applies regardless of whether the individual will be supervised.

When determining whether someone requires an Enhanced DBS check, you need to consider if the work they do would otherwise be considered regulated activity, if they were to be unsupervised and/or conducting it on a ‘regular’ basis (as per the earlier definition of regular regulated activity).

Example: A volunteer has contact with children only on an infrequent or one-off basis, and the contact he/she has is always supervised. This would not be considered regulated activity.

Furthermore, the contact this volunteer has with the children would not otherwise be considered ‘regulated’ if he/she was to be unsupervised or conducting this on a more ‘regular’ basis (as per the definition of regulated activity).

Therefore, the volunteer will not be eligible for a DBS check and the organisation has no legal entitlement to ask for one.





Striking a balance between privacy and protection

One of the reasons this last point is so important is that many organisations – faced with the complexity of DBS checks and regulated activity – will take what they think is a safety-first approach and seek DBS checks for all their staff and volunteers. However, this is not always necessary or appropriate. Checks should only be sought where they are required for the role.

If the individual will be working in a specific occupation, for certain licences or in a specified position (as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975), then the organisation must request a DBS check for that individual.

However, this same legislation also protects an individual's privacy and gives them certain rights about what they are required to disclose. Certain aspects of an individual's criminal history are 'protected' and therefore exempt from disclosure on a DBS check. This process is called 'filtering'.

On the other hand, there are many aspects of someone's criminal history that are not protected and will always be disclosed as part of a DBS check.

These include:

- Cautions and convictions for specified serious violent and sexual offences.
- Other specified offences of relevance for posts concerned with safeguarding children and adults-at-risk.
- Custodial sentences of over four years, or public protection sentences.



This government website provides a [full list of offences which will never be filtered from a DBS check](#).

Avoiding the risk of discrimination in the vetting process

When considering whether to apply for a DBS certificate, applicants should only be asked to confirm or deny if they have any convictions, cautions, reprimands, or final warnings which would not be 'filtered'.

Also it is important to be aware that DBS do not disclose youth reprimands, youth warnings, or youth cautions. Furthermore, DBS do not automatically disclose all convictions where an individual has more than one conviction – instead, each individual conviction will be assessed against the appropriate rules.

This is as far as the vetting should go and you must not ask applicants to elaborate. Doing so could be discriminatory and potentially leave you exposed to litigation.

These measures aim to facilitate the reintegration of offenders, especially youth offenders into the work place. Employers should ensure that any questionnaire sent to prospective applicants fully complies with the current rules. More generally, employers should be mindful of the General Data Protection Regulation ('GDPR') and Data Protection Act 2018 ('DPA 2018'), as well as the Human Rights Act 1998 ('HRA 1998') which all include regulation relevant to the processing of sensitive information such as criminal records. This means greater emphasis on accountability and proportionality (for example requesting this information only at the end of the recruitment process and not keeping details of convictions, but only the outcome of the DBS check).

Further information

Below are a list of links and resources that you might find useful:

[What to include in your safeguarding policies and procedures](#)

[Regulated activity with children](#)

[Regulated activity with adults](#)

[Offences that will never be filtered from a criminal record check](#)

[Guidance on the Rehabilitation of Offenders Act:](#)

Guidance on the Rehabilitation of Offenders Act 1974 and the Exceptions Order 1975 – GOV.UK (www.gov.uk)

[Criminal checks for overseas applicants](#)

[DBS eligibility guidance](#)



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