

Advice notes

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THE DISCLOSURE AND BARRING SERVICE

This advice note was written by our in-house solicitors and last updated on 7 October 2013.

The information and commentary in the note do not constitute legal advice for any individual case or matter. For specific advice on your circumstances, we strongly encourage you to seek tailored legal advice.

Introduction

The Protection of Freedoms Act 2012 (“the 2012 Act”) established the Disclosure and Barring Service (“DBS”). The DBS comprises the former Independent Safeguarding Authority (“ISA”) and the Criminal Records Bureau (“CRB”), and it is responsible for monitoring the suitability of individuals who work with children and vulnerable adults and providing criminal record certificates. The DBS has a duty to maintain the children’s barred list and the adults’ barred list, which bar individuals who appear on the lists from working with children and vulnerable adults.

CRB checks are now known as DBS checks. DBS checks may be needed for employees, workers, or volunteers or individuals working under a contract for services.

Under the Rehabilitation of Offenders Act 1974 (“the 1974 Act”), a person with a criminal conviction(s) is not required to disclose any spent conviction(s) unless the position they are applying for, or are currently undertaking, constitutes an exception under the 1974 Act. The period before a conviction will become spent (also known as the rehabilitation period) will depend on the nature and length of the sentence received for the offence. A sentence of imprisonment of more than two and a half years will never become spent. The rehabilitation period for a sentence of imprisonment of more than six months but no more than two and a half years is 10 years. Cautions, warnings and reprimands are spent as soon as they are issued. Anyone who wants to undertake paid or unpaid work can, however, be asked to disclose unspent convictions.

Who needs a DBS check?

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (“the 1975 Order”) confirms the types of paid or unpaid work or particular jobs that are eligible for a DBS check. A description of the type of work and activities that are subject to the 1975 Order is set out in the annexe of this advice note.

The general position is that employers cannot ask about spent convictions but this rule does not apply for positions that require a DBS check and which will never become spent, for example accountants, solicitors and healthcare professionals.

What are the different types of DBS checks?

There are three types of DBS check:

- Standard checks — To be eligible for a standard-level DBS check, the position must be included in the 1975 Order.
- Enhanced checks — To be eligible for an enhanced level DBS check, the position must be included in both the 1975 Order and in Police Act 1997 (Criminal Records) Regulations.
- Enhanced checks with children and/ or adults barred list check(s) — To be eligible to request a DBS check of the children’s or adults’ barred lists, the position must be eligible for an enhanced DBS check and be specifically listed in the Police Act 1997 (Criminal Records) Regulations as able to check the barred list(s).

Standard DBS checks are available for any work or position referred to in the Annex. They identify current (i.e. unspent) and spent convictions, cautions, reprimands and warnings held on the Police national computer. Enhanced DBS checks contain the same information as the standard DBS checks but with the addition of any relevant and proportionate information held by police authorities. An enhanced DBS check is available for posts that involve caring for, supervising or being in sole charge of children or vulnerable adults (e.g. teachers, guide leaders). Each case will turn on its facts and specific requests for advice on whether DBS checks are necessary can be sent to NALC for consideration.

What is the cost of a DBS check?

A standard DBS check costs £26. An enhanced DBS check costs £44. An enhanced with lists check costs £44. Checks for eligible volunteers are free

of charge. This includes anyone who spends time helping people and is not being paid (apart from travel and other approved out of pocket expenses) or is not only looking after a close relative. A standard check normally takes two weeks. The other checks normally take four weeks.

Do local council staff, councillors or volunteers need DBS checks?

The annexe does not refer to work or jobs that are specific to local councils.

The annexe refers to work that involves “regulated activity” relating to children or vulnerable adults as referred to in Parts 1 and 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (“the 2006 Act”).

Regulated activity relating to children (i.e. a person under the age of 18) means (a) it is mentioned in paragraph 2(1) of Part 1 of Schedule 4 to the 2006 Act, and (b) it is carried out frequently by the same person or the period condition is satisfied. Paragraph 2 (1) includes teaching, training, instruction of, care for or supervision of children. If another person supervises the person in question, the activity is not regulated. The period condition is satisfied if the person carrying out the activity does so at any time on more than three days in any period of 30 days, or overnight. The term “frequently” is not defined in the 2006 Act because it is intended to take its normal, everyday meaning.

“Regulated activity” for vulnerable adults is defined in paragraph 7 (1) of Part 2 of Schedule 4 to the 2006 Act and includes (i) the provision to an adult of health care by or under the direction or supervision of a health care professional and (ii) the provision of assistance in relation to general household matters to an adult who is in need of it by reason of age, illness or disability.

The annexe also lists as positions which require DBS checks in relation to children “any work in a further education institution or 16 to 19 Academy where the normal duties of that work involve regular contact with children” and “any position which otherwise involves regularly caring for, training, supervising or being solely in charge of children.” “Regular” is not defined in the 2006 Act. It would include activity that occurs on an ongoing basis over a period of time.

NALC is sometimes asked whether councillors or council staff who sit on youth council committees require checks. This would depend on the facts in each case. For example, if a councillor or member of council staff is regularly left alone with or supervises children, then this will amount to a

regulated activity, and a DBS check will be necessary. Examples of other occasions when DBS checks may be needed for certain positions include lifeguards at local council swimming pools, youth club leaders, or volunteers for local council-run social clubs for the elderly. If the activity is included in the Annex, councils are required to request DBS checks for such persons.

If the work undertaken means a person will or is likely to come into contact with children (for example, a council cleaner because the council's offices and meetings venue is next to a children's playground), it is NALC's view that this contact will not in itself be sufficient to warrant a DBS check being performed for such a person.

The Ministry of Justice advises that organisations should not insist that a DBS check forms part of a recruitment exercise or bid when tendering for contracts unless the work is listed in the annexe.

Recruitment - what should councils do if they need to carry out DBS checks?

Employers should only arrange a DBS check on a successful job applicant. They can withdraw a job offer if the results show the applicant is barred from working in the position by virtue of the check. These are the basic steps for a DBS check:

- Get the application form from DBS or the umbrella body.
- Ask the candidate to fill in the application form.
- Send the application form to the umbrella body or DBS.
- DBS will send the certificate to the applicant. The employer will have to ask the applicant to see the certificate.

Should councils use umbrella bodies?

The advice on the DBS's website is for an organisation to use an umbrella body if it will require fewer than 100 checks a year. Such organisations cannot register directly with the DBS. This is likely to apply to the vast majority of local councils. As was the case with CRB checks, principal authorities are umbrella bodies.

What should councils do with copies of DBS checks?

In NALC's view, DBS checks on individuals constitute personal data (and possibly sensitive personal data depending on the information contained in

the check), which a council has a duty to handle in accordance with its obligations under the Data Protection Act 1998 (“the 1998 Act”). A council, as a data controller, must apply the data processing principles when handling and storing such data. If a council has DBS checks in paper form, access to them should be restricted to the appropriate and relevant persons, and they should be stored securely. Electronic copies of DBS checks should be stored in password-protected or encrypted files, and access to them should also be restricted to the appropriate and relevant persons. DBS checks must not be kept for longer than necessary after the person’s relationship with the council has ended.

Local councils should contact NALC or the [DBS](#) should they require further advice and clarification.

Annexe one — Positions, professions, employment, offices and works eligible for DBS checks taken from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

- Any work which is currently defined as regulated activity relating to children within the meaning of Schedule 4 Part 1 of the Safeguarding Vulnerable Groups Act 2006 — Reference number 1
- Any work which was defined as regulated activity relating to children within the meaning of Schedule 4 Part 1 of the Safeguarding Vulnerable Groups Act 2006 before the coming into force of section 64 of the Protection of Freedoms Act 2012 on 10th September 2012 — Reference number 2
- Any work which is currently defined as regulated activity relating to adults within the meaning of Schedule 4 Part 2 of the Safeguarding Vulnerable Groups Act 2006 — Reference number 3
- Any work which was defined as regulated activity relating to vulnerable adults within the meaning of Schedule 4 Part 2 of the Safeguarding Vulnerable Groups Act before the coming into force of sections 65 and 66 of the Protection of Freedoms Act 2012 on 10th September 2012 — Reference number 4
- Any office or employment which is concerned with the provision of care services to vulnerable adults; or the representation of, or advocacy services for, vulnerable adults by a service that has been approved by the Secretary of State or created under any enactment; and which is of such a kind as to enable a person, in the course of his normal duties, to have access to vulnerable adults in receipt of such services — Reference number 5

- Any work in a regulated position within the meaning of Part 2 of the Criminal Justice & Court Services Act 2000. This does not include those working with 16/17-year-olds on work experience — Reference number 6
- Any work in a further education institution or 16 to 19 Academy where the normal duties of that work involve regular contact with children — Reference number 7
- Any position which otherwise involves regularly caring for, training, supervising or being solely in charge of children — Reference number 8
- Healthcare Professional – A person who is regulated by a body mentioned in subsection (3) of section 25 of the National Health Service Reform and Health Care Professions Act 2002 — Reference number 9
- Barrister (in England and Wales), solicitor — Reference number 10
- Chartered accountant, certified accountant — Reference number 11
- Veterinary surgeon — Reference number 12
- Actuary — Reference number 13
- Registered foreign lawyer — Reference number 14
- Legal executive — Reference number 15
- Judicial appointment — Reference number 16
- The Director of Public Prosecutions and any office or employment in the Crown Prosecution Service — Reference number 17
- Designated officers for magistrates' courts, justices of the peace, local justice areas, justices' clerks and assistants to justices' clerks — Reference number 18
- Persons employed for the purposes of assisting constables of a Police Force established under any enactment — Reference number 19
- Any employment within the precincts of a prison, a remand centre, a removal centre, a short-term holding facility, a detention centre, a Borstal institution, a young offenders institution, and members of boards of visitors (England & Wales) — Reference number 20
- Traffic wardens — Reference number 21
- Probation officers — Reference number 22
- Any employment or other work which is concerned with the provision of health services and which is of such a kind as to enable the holder of that employment or the person engaged in that work to have

access to persons in receipt of such services in the course of his normal duties — Reference number 23

- Financial Services position – This means all positions for which the Financial Conduct Authority (previously the Financial Services Authority) or the competent authority for listings are entitled to ask exempted questions to fulfil their obligations under the Financial Services and Markets Act 2000 — Reference number 24
- Those working within an Authorised Payment Institution as directors and managers, holders of qualifying holdings, and controllers of the Authorised Payment Institution — Reference number 25
- Any employment in the Royal Society for the Prevention of Cruelty to Animals (RSPCA) where the person employed or working, as part of his duties, may carry out humane killing of animals — Reference number 26
- The Commissioners for Her Majesty's Revenue and Customs (HMRC) and any office or employment in their services — Reference number 27
- The Director and any office or employment in the Revenue and Customs Prosecutions Office — Reference number 28
- Any employment which is concerned with the monitoring, for the purposes of child protection, of communications by means of the internet — Reference number 29
- An individual designated under section 2 of the Traffic Management Act 2004 — Reference number 30
- The following court positions:
 - Judges' clerks, secretaries and legal secretaries within the meaning of section 98 of the Supreme Court Act 1981(c) — Reference number 31
 - Court officers and court contractors who, in the course of their work, have face to face contact with judges of the Supreme Court, or access to such judges' lodgings — Reference number 31
 - Persons who in the course of their work have regular access to personal information relating to an identified or identifiable member of the judiciary — Reference number 31
 - Court officers and court contractors who, in the course of their work, attend either the Royal Courts of Justice or the Central Criminal Court — Reference number 31

- Court security officers and tribunal security officers — Reference number 31
- Court contractors who, in the course of their work, have unsupervised access to court- houses, offices and other accommodation used in relation to the courts — Reference number 31
- Contractors, sub-contractors, and any person acting under the authority of such a contractor or sub-contractor, who, in the course of their work, have unsupervised access to tribunal buildings, offices and other accommodation used in relation to tribunals — Reference number 31
- Court officers and court contractors who exercise functions in connection with the administration and management of funds in court, including the deposit, payment, delivery and transfer in, into and out of any court of funds in court, and regulating the evidence of such deposit, payment, delivery or transfer, and court officers and court contractors who receive payment in pursuance of a conviction or order of a magistrates' court — Reference number 31
- The following persons: court officers who execute county court warrants, high court enforcement officers, sheriffs and under-sheriffs, tipstaffs, any other persons who execute High Court writs or warrants who act under the authority of a person listed at (a) to (d), persons who execute writs of sequestration, civilian enforcement officers as defined in section 125A of the Magistrates' Courts Act 1980, persons who are authorised to execute warrants under section 125B (1) of the Magistrates' Courts Act 1980, and any other person (other than a constable) who is authorised to execute a warrant under section 125 (2) of the 1980 Act, and persons who execute clamping orders, as defined in paragraph 38(2) of Schedule 5 of the Courts Act 2003(d) — Reference number 32
- Individuals seeking to carry, acquire or transfer prohibited weapons or ammunition under section 5 of the Firearms Act 1968(c) – Maritime armed guards — Reference number 33
- A regulated immigration adviser who provides immigration advice or immigration services under Section 82(1) of the Immigration & Asylum Act 1999(a). This also applies to persons who act on behalf of and are under the supervision of such a registered person — Reference number 34
- Staff working for the Office of the Public Guardian with access to data relating to vulnerable adults — Reference number 35

- Any employment or other work where the normal duties involve caring for, training, supervising, or being solely in charge of persons aged under 18 serving in the naval, military or air forces of the crown or include supervising or managing a person employed or working in a capacity referred to in paragraph (a) — Reference number 36
- A person living at the premises where a childminding or daycare service is provided or who regularly works on the premises at a time when the childminding takes place — Reference number 37
- A person living in the same household as a person whose suitability is being assessed for a position working with children and who lives on the same premises where their work with children would normally take place — Reference number 38
- Applications for prospective adopters, special guardians or anyone who lives in the adoption household in England and Wales — Reference number 39
- Applications for prospective foster carers, prospective private foster carers or anyone who lives in the fostering household in England and Wales — Reference number 40
- Individuals seeking authorisation from the Secretary of State for the Home Department to become authorised search officers — Reference number 41
- For the award of public works contracts, public supply contracts and public service contracts in accordance with Directive 2004/17/EC and 2004/18/EC of the European Parliament and of the Council of March 2004(a) — Reference number 42
- Football stewards, supervisors or managers of football stewards — Reference number 43
- Approved Legal Services Body Manager — Reference number 44
- Those working for Alternative Business Structures as head of finance and administration of a licensed body approved under schedule 11 of the Legal Services Act 2007, head of legal practice of a licensed body approved under schedule 11 of the Legal Services Act 2007, and owners of a licensed body approved under schedule 13 of the Legal Services Act 2007 — Reference number 45
- Any employment or other work which is normally carried out in premises approved under section 9 of the Criminal Justice and Court Services Act 2000 — Reference number 46
- Any person who has applied to be granted membership of the Master Locksmiths Association — Reference number 47

- The Commissioner for Older People in Wales, his deputy and any people appointed by the Commissioner to assist him in the discharge of his functions or authorised to discharge his functions on his behalf — Reference number 48
- Commissioners for the Gambling Commission and any office or employment in their service — Reference number 49
- Police and Crime Commissioners — Reference number 50
- For Taxi Driver and Private Hire Vehicle licensing purposes — Reference number 51
- For National Lottery licensing purposes — Reference number 52
- For licences issued under Section 25 of the Children & Young Persons Act 1933 (This relates to persons under the age of 18 travelling abroad for the purpose of performing or being exhibited for profit) — Reference number 53
- For licences issued under Section 8 of the Private Security Industry Act 2001 — Reference number 54
- For obtaining or holding a personal or operating licence under Part 5 or Part 6 of the Gambling Act 2005 — Reference number 55
- For obtaining or holding a licence under regulation 5 of the Misuse of Drugs Regulations 2001, article 3(2) of Regulation 2004/273/EC (b) or article 6(1) of Regulations 2005/111/EC(c) — Reference number 56