

Disclosure and Barring Service

Guidance for Ealing Schools (Revised August 2017)

Overview of more recent changes:

Keeping Children Safe in Education

The statutory guidance “Keeping children safe in education” (Department for Education, Sept 2016) brings together all the government’s current Disclosure and Barring Service (DBS) and safeguarding guidance for schools.

There is a one page checklist on current DBS requirements on the EGFL at <http://www.egfl.org.uk/categories/personnel/safe/dbs.html>.

The Disclosure and Barring Service

The DBS now acts as a ‘one-stop-shop’ for organisations, checking police records and, in relevant cases, information held by the Department of Health and the Department of Education. Everyone appointed to work in a school, from March 2002, is required to have an enhanced check.¹ Information provided as part of a DBS Disclosure must be treated as confidential and not be passed to anyone who does not need it in the course of their duties. Once the checks are complete, the DBS will send a certificate to the applicant. The applicant must show the original DBS certificate to their potential employer before they take up the post or as soon as practicable afterwards.² Before the disclosure is destroyed a record of it needs to be kept in the school’s Single Central Record (SCR).

The HRSSC have received confirmation from the DBS that if the employer obtains written consent from the employee after discussing the reason behind the retention of a copy of the certificate this becomes a private agreement between the employer and the applicant.

The Protection of Freedom Act 2012

Increased safeguards introduced under the Vetting and Barring Scheme were confirmed under the Protection of Freedom Act 2012.

- It is now a criminal offence for individuals barred by the DBS to work or apply to work with children or vulnerable adults in a wide range of posts - including education and childcare. Employers also face criminal sanctions for knowingly employing a barred individual across a wider range of work;
- Employers, local authorities, professional regulators and other bodies have a duty to refer to the DBS information about individuals working with children or vulnerable adults where they consider them to have caused harm or pose a risk of harm.

The Act has made a number of changes to the government requirements and reduced the scope of the definition of regulated activity. All staff in regulated activity must be DBS checked. Regulated activity includes:

¹ The school staffing (England) (Amendment) (No2) Regulations 2006

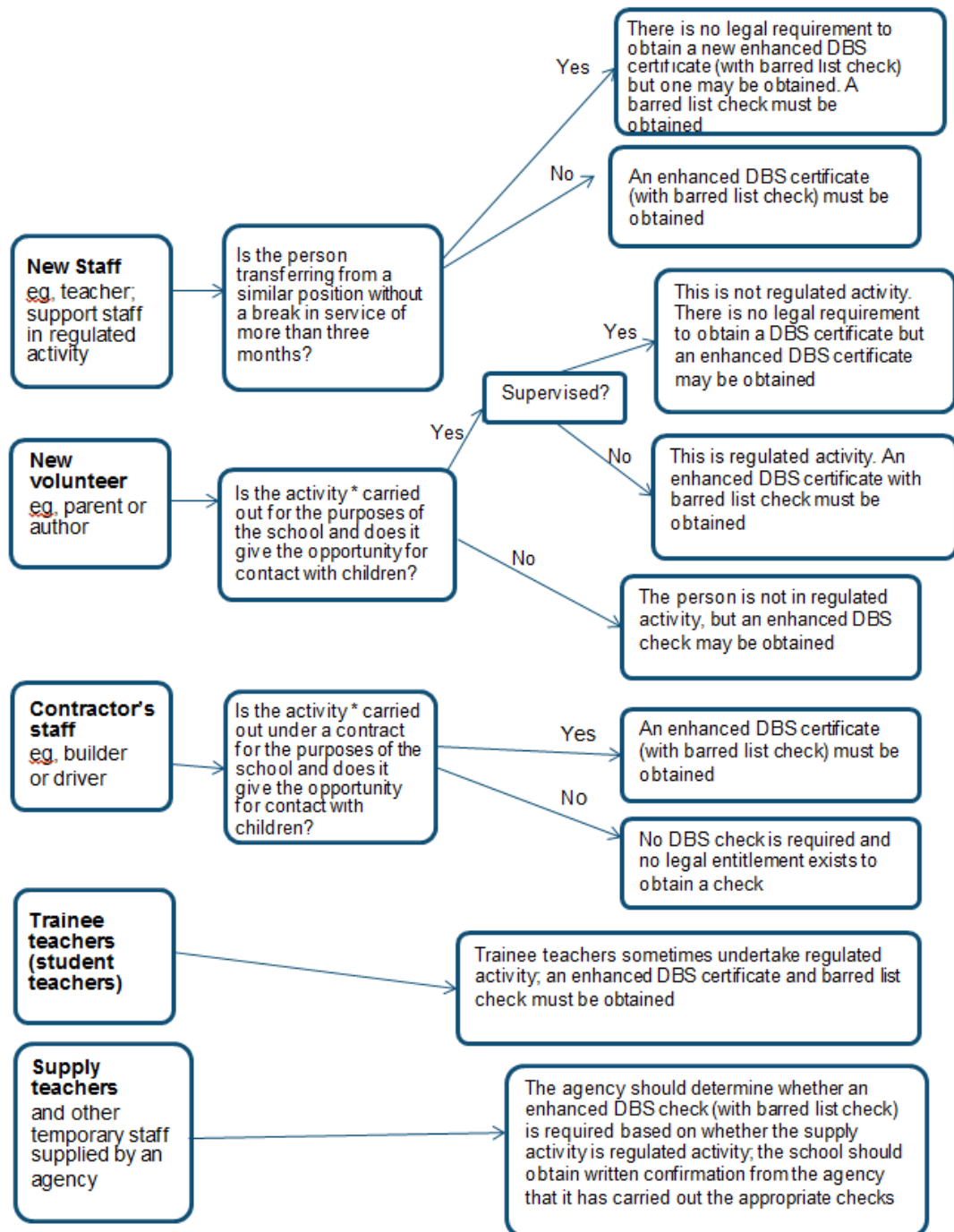
² Keeping children safe in education Sept 2016, Para 93

- a) teaching, training, instructing, caring for or supervising children if the person is unsupervised, or providing advice or guidance on well-being, or driving a vehicle only for children,
- b) work for a limited range of establishments (including schools) with the opportunity for contact with children, but not including work done by supervised volunteers;

DBS Update Service

For an annual fee employees can have your DBS certificate kept up-to-date and take it with them from role to role, within the same workforce, where the same type and level of check is required. Employers can check online to see if there has been any change in status.

Ealing Council decided in June 2014 not to corporately adopt the update service. Schools may choose to make use of this service. Schools may also choose to accept on line checks for new staff but must ensure they have sight of the original document so that they are assured there were no original concerns of which they needed to be aware.



* Activities listed under the guidance's definition of regulated activity and which are carried out 'frequently'

Flowchart is from Keeping Children Safe in Education Sept 2016

1) Who must have a DBS Disclosure

School Staff

On 12th May 2006 the School Staffing (England) (Amendment) Regulations 2006 made it mandatory for Enhanced DBS Disclosures to be carried out on all new appointments to the school workforce; this also includes those who do not work directly with children, for example administration staff, caretakers and other ancillary staff. Schools should not ask existing staff already in post who were not previously eligible (including those recruited before the establishment of the DBS). DBS Disclosures do not expire therefore there is no requirement to re-check existing staff.

Ofsted guidance on inspecting safeguarding has emphasised that there is no requirement for schools to carry out retrospective checks on current staff – the necessary checks are those that were in force at the time of the appointment was made³. There has never been a statutory requirement for disclosure certificates to be renewed. Inspectors have been guided to avoid giving any impression that Ofsted consider such routine re-checks to be good practice.

Volunteers

Under no circumstances should a volunteer in respect of whom no checks have been obtained be left unsupervised or allowed to work in regulated activity.

The protection of Freedoms Act 2012 has removed the requirement to routinely carry out DBS checks on all volunteers even where they regularly work with children. Instead the Act introduces the concept of supervision of volunteers. Where a school is satisfied that it can provide an adequate level of supervision of a volunteer by a suitably checked person it is not required to do a DBS check. A school may choose to request one as they judge necessary but may not request a check of the barred list as the employee will not be in regulated activity.

Volunteers are seen by children as safe and trustworthy adults. Thus the same precautions should apply when a school is recruiting volunteers to work with children. Because volunteers fill a wide variety of roles that principle needs to be applied with common sense and the process may need to be adapted to cater for particular roles and sensitivities. For example, if a parent volunteer is one of a group helping out on a one-off occasion such as a day trip or a sports day, when there will always be another DBS checked adult present there is no need for a formal recruitment and selection process or a need for a DBS disclosure. Employers are not legally allowed to request a barred list check on a volunteer who, because they are supervised, is not in regulated activity.⁴ However if a volunteer is going to have an on going role that involves regular contact with children, an overnight stay, or means that the person will be on the premises when children are present regularly or frequently, a similar recruitment process should be adopted as would be used to recruit a paid member of staff filling a similar role.

The DBS do not charge for volunteer applications. The DBS definition of a volunteer: “a person who is engaged in any activity which involves spending time, unpaid (except for

³ Inspecting Safeguarding – Ofsted January 2014 Annex 2 – DBS: repeat checks and portability

⁴ Keeping children safe in education Sept 2016 page 24

travelling and other approved out-of-pocket expenses), doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives.” Some people can be referred to as volunteers, but do not actually meet the criteria to get a free check. This is because they may receive, or expect to receive, a benefit, such as remuneration or a credit towards a qualification.

There are also occasions when external organisations provide volunteers who also provide services in schools. These volunteers must have been checked by their respective employing organisation. Schools need to satisfy themselves that these volunteers have been subject to a check before they are allowed unsupervised access to children. Schools must confirm that an Enhanced check has been conducted and is satisfactory.

School Governors

From 18 March 2016 it became mandatory for school governors in maintained schools to apply for an enhanced DBS disclosure without a check against the Children’s Barred List unless they also happen to work in regulated activity. The School Governance (Constitution & Federations) (England) (Amendment) Regulations 2016 state:

- By 1 September 2016, all maintained school governing bodies to apply for an enhanced criminal records certificate for any serving governor who does not have one; and
- From 1 April 2016, all newly appointed/elected governors or associate members will ideally need to be checked as part of the recruitment process, or at the latest have applied for a check within 21 days of appointment (start of term of office).

Academies and Free Schools

For those engaged in management roles in independent schools including academies and free schools an additional check is required to ensure they are not prohibited under section 128 provisions of the Education and Skills Act 2008.⁵

Agency and third party staff

Schools must obtain written notification from any agency, or third party organisation, they use that the organisation has carried out the checks on an individual who will be working at the school that the school would otherwise perform. This must include, as necessary, a barred list check, prior to appointing that individual. A copy of the written notification should be kept with the SCR. They must also check that the person presenting themselves for work is the same person on whom the checks have been made.

Overseas staff and teachers

Newly appointed staff who have lived outside the United Kingdom must undergo the same checks as for all other staff in schools including an enhanced check and DBS Children’s Barred List check. In addition, schools and colleges must make any further checks they think appropriate so that any relevant events that occurred outside the UK can be considered. These further checks should include a check for information about any teacher sanction or restriction that an EEA professional regulating authority has imposed, using the NCTL Teacher Services’ system.

⁵ Keeping children safe in education Sept 2016 Para 99

<https://teacherservices.education.gov.uk/>

Although restrictions imposed by another EEA regulating authority do not prevent a person from taking up teaching positions in England, schools and colleges should consider the circumstances that led to the restriction or sanction being imposed when considering a candidate's suitability for employment.

The Home Office has published guidance on criminal record checks for overseas applicants. The department has also issued guidance on the employment of overseas-trained teachers. This gives information on the requirements for overseas-trained teachers from the EEA to teach in England, and the award of qualified teacher status for teachers qualified in Australia, Canada, New Zealand and the United States of America.

<https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

<https://www.gov.uk/government/publications/employing-overseas-trained-teachers-from-outside-the-eea>

Schools should record the further checks they have made on their single central record.

School Contractors

Schools should ensure that any contractor, or any employee of the contractor, who is to work at the school have been subject to the appropriate check. Contractors engaging in regulated activity will require an enhanced DBS certificate (including barred list information). For all other contractors who are not engaging in regulated activity but whose work provides them with an opportunity for regular contact with children, an enhanced DBS check (not including barred list information) will be required.⁶

Teacher/student teachers

Where applicants for initial teacher training are salaried by the school it must ensure that all necessary checks are carried out. As trainee teachers can undertake regulated activity, sometimes unsupervised, an enhanced DBS certificate and barred list check must be obtained.

Where trainee teachers are fee-funded it is the responsibility of the initial teacher training provider to carry out the necessary checks. The training provider must be open about any information it holds of its students and share it appropriately before the student begins any placement.⁷

Tutors / Extended School Activities

Individuals using the school premises to tutor pupils (e.g. music/sport) who are not directly employed by the school must be checked. It would normally be the responsibility of the individual to pay for the check. This, however, would be an agreement made by the school,

⁶ Keeping children safe in education Sept 2016 Para 134

⁷ Inspecting safeguarding in early years, education and skills settings – Ofsted August 2016

with the individual. Should tutors hire a school hall (e.g. for Judo) and school pupils attend then the hire agreement should include a requirement for tutors to be checked.

Governing bodies continue to be responsible for extended school activities on the school site before and after school, unless they have a 'transfer of control agreement' so that other bodies are responsible during the times specified. In the latter case, governors should seek assurance that these other bodies have appropriate policies in place to safeguard children. Where a third party is running extended services, there should be a written agreement setting out responsibility for vetting checks, health and safety, insurance cover and the like. 8

Visiting Staff

Staff such as educational psychologists, supply teachers, trainee teachers, nurses, sports coaches and inspectors should be DBS checked by their 'providing' organisation, for example the supply agency, the university, primary care trust, local authority, and so on. It is sufficient, for schools and colleges to seek written confirmation that appropriate checks, including DBS checks, have been carried out (most commonly on appointment) and by whom (most commonly the relevant human resources department), and to confirm the identify of these visitors. Written confirmation may take the form of a public statement on the providing organisation's website, a practice adopted by Ofsted. A copy of any written notification should be kept with the SCR.

Ealing Council have confirmed the following council staff have been checked.

<https://www.egfl.org.uk/human-resources/safer-working-practice/la-staff-visiting-schools>

Even if they do have a Disclosure all staff, agency workers, volunteers, contractors etc must have their identity independently checked by the school.

2) Who does not need to have a Disclosure

Ad-hoc visitors

Who have business with the Head Teacher or other staff or have brief contact with children with a teacher present do not require a DBS check, however they must not be left unsupervised with children.

Emergency contractors

Who carry out emergency repairs or service equipment need not necessarily be DBS checked. An identity check may be sufficient. When a contractor has reason to be on site then a designated member of school staff must escort them at all times while on site.

Building contractors who will have no access to pupils

Children should not be allowed in areas where builders are working for Health and Safety reasons so workers should have no contact with children. However, schools must ensure that arrangements are in place with contractors to make sure that any of the contractors staff that come into contact with children undergo appropriate checks.

Secondary pupils

On KS4 work experience, in other schools or nursery classes: secondary pupils undertaking work in another school as part of voluntary service, citizenship or vocational studies: or KS5 or 6th Form pupils in connection with a short careers or subject placement. In these cases the school placing the pupil should ensure that he/she is suitable for the placement in question. The receiving school must also ensure that there is no unsupervised access to children. Children under 16 are not eligible to be checked.

Portability (accepting a DBS check undertaken by another employer)

There is also no requirement to obtain an enhanced DBS certificate or carry out checks for events that may have occurred outside the UK if, in the three months prior to their appointment, the applicant has worked in a school in England in a post which brought them into regular contact with children or young persons in any post in a school since 12 May 2006. All other pre-appointment checks must still be completed, including where the individual is engaging in regulated activity, a barred list check. Schools or colleges may also choose to request an enhanced DBS certificate should they wish to do so.⁹

3) Starting work pending a DBS Disclosure

Ideally, a DBS check should be obtained before an individual begins work. However, Head Teachers have discretion to allow an individual to begin work pending receipt of the Disclosure. Where it is necessary to engage a member of staff where the DBS check remains outstanding, the Head Teacher must ensure that the employee is appropriately supervised, and the request for the DBS has been submitted in advance of the individual starting work. When starting someone in advance of receiving their DBS check, the school is strongly advised to undertake a written risk assessment and keep a copy. Someone who has not obtained an enhanced Disclosure **MUST NOT** be left unsupervised with children.

There is a statutory requirement for staff to be checked against the Children's Barred List before they commence work in a school. The DBS Disclosure includes this check. However, should an employee start work pending a DBS check the Head Teacher must ensure the Children's Barred List check is carried out separately before commencement.

Appropriate supervision for staff who start work prior to the result of a DBS check being known needs to reflect what is known about the person concerned, their experience, the nature of their duties and the level of responsibility they will carry. For those with limited experience and where references have provided limited information the level of supervision required may be high. For those with more experience and where the references are detailed and provide strong evidence of good conduct in previous work a lower level of supervision could be appropriate. For all staff without completed checks it should be made clear that they are subject to this additional supervision. The nature of the supervision should be specified and the roles of staff in undertaking the supervision spelt out. The arrangements should be reviewed regularly, at least every two weeks until the check is received. Where a Disclosure indicates cause for concern, the member of staff must immediately be withdrawn from the school pending further enquiries.

⁹ Keeping children safe in education Sept 2016 Para 105

4) What to take into account when deciding whether a person's criminal record is relevant?

An applicant's suitability should be judged in the light of the results of all the relevant pre-appointment checks carried out on him or her. The fact that a person has a criminal record does not automatically make him or her unsuitable for work with children. Employers, in conjunction with the registered body or person authorised to receive Disclosure information, must make a judgement about suitability, taking into account only those offences, which may be relevant to the particular job or situation in question. In deciding the relevance of convictions a number of points should be considered:

i. **the nature of the offence:** In general, convictions for sexual, violent or drug offences will be particularly strong contra-indications for work with children;

ii. **the nature of the appointment:** Often the nature of the appointment will help to assess the relevance of the conviction. For example, serious sexual, violent, drug or drink offences would give rise to particular concern where a position was one of providing care. Driving or drink offences would be relevant in situations involving transport of children;

iii. **the age of the offence and whether or not committed whilst a juvenile:** Offences, which took place many years in the past, may often have less relevance than recent offences. However, convictions for serious violent or sexual offences or serious offences involving substance abuse are more likely to give cause for continuing concern than, for instance, an isolated case of dishonesty committed when the person was young. The potential for rehabilitation must be weighed against the need to protect children;

iv. **the frequency of the offence:** A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction

There are some convictions which are serious enough to lead to an automatic bar from working in regulated activity. These can be found on the DBS website.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249429/dbs-factsheet-relevant-offences.pdf