

Disclosure and Barring Service

Guidance for Ealing Schools (Revised May 2016)

Overview of more recent changes:

Keeping Children Safe in Education

The statutory guidance “Keeping children safe in education” (Department of Education, July 2015) brings together all the government’s current Disclosure and Barring Service (DBS) and safeguarding guidance for schools and replaces the previous statutory guidance “Keeping Children Safe in Education” April 2014, “Safeguarding children and safer recruitment in education” (December 2006) and “Dealing with Allegations of Abuse made against Teachers and Other Staff” 2012. This paper reflects the most recent statutory guidance.

There is also a one page checklist on current DBS requirements on the EGFL at <http://www.egfl.org.uk/categories/personnel/safe/dbs.html>. This guidance gives further details for schools which may require more detail.

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. Any Disclosure information that is retained must be kept in secure conditions and should not be kept for longer than six months.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 Independent safeguarding authority (Now 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.

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

² Keeping children safe in Education July 2015, para 74

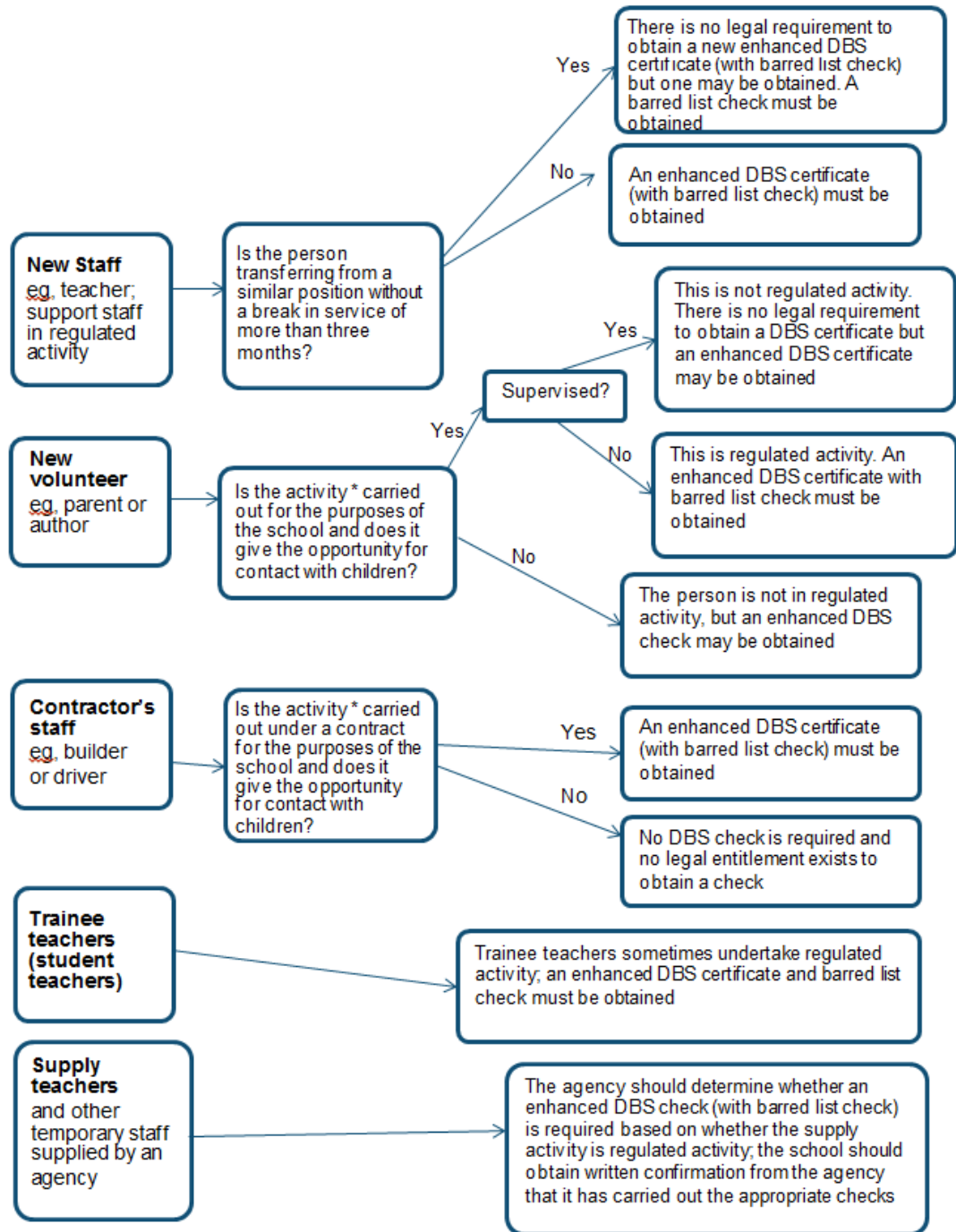
The Protection of Freedoms Act 2012 has made a number of changes to the government requirements and reduced the scope of the definition of regulated activity. These changes are reflected in this revised guidance. All staff in regulated activity must be DBS checked. Regulated activity includes:

- 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 (on the grounds of cost), however they will keep this decision under review. Schools may of course 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 that needed to be aware of or gain updated information on.



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

Flowchart is from Keeping Children Safe in Education July 2015

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 CRB Disclosures (from December 2012 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's guidance on inspecting safeguarding³ emphasises 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 made. There has never been a statutory requirement for disclosure certificates to be renewed and the Department of Education is renewing and strengthening its guidance to deter schools from such routine re-checks which are considered to be a poor use of resources. Inspectors are guided to avoid giving any impression that Ofsted consider such routine re-checks to be good practice.

There is no statutory requirement for another DBS check where the person has worked in a relevant post within 3 months prior to appointment.⁴ Ealing does not recommend recognising portability unless the person has worked in a relevant post within 3 months prior to appointment.

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.)⁵

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, a fete, a sports day or a school disco, 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

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

⁴ Inspecting Safeguarding – Ofsted January 2014 Annex 2 – DBS: repeat checks and portability

⁵ Keeping children safe in education- July 2015, para 85

on a volunteer who, because they are supervised, is not in regulated activity⁶. 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 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. If the disclosure did contain information the school will need to obtain this.

School Governors

From 18 March 2016 it became mandatory for school governors in maintained schools to apply for an enhanced DBS (Disclosure and Barring Service) check (without a check against the Children’s Barred List). 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).

All current governors should have completed or be in the process of being checked by the 1 September 2016 and failure to do so may result in disqualification from being a governor.

All newly appointed/elected governors or associate members will need to be checked as part of the recruitment process.

A record should be maintained in the school Single Central Record (SCR).

Academies and Free Schools

Although the legislation is for maintained schools, academy and free school governors also all have to be DBS checked and the chair’s clerk has to be done via the DfE. More information is available in page three of the DBS guide for academies (Gov.UK website).

⁶ Keeping children safe in education , July 2015, para 85

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. Agency staff working at the school beyond just a few days ought to be included on the school's central staffing record.

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.

A disclosure for overseas staff will not generally detail offences committed whilst abroad. The Department of Education therefore advises that additional checks such as obtaining certificates of good conduct from relevant embassies or police force are necessary. These should be obtained for any newly appointed staff that have been resident overseas in the previous five years. Where an applicant is from or has lived in a country where criminal record checks cannot be made for child protection purposes, or is a refugee with leave to remain in the UK, and has no means of obtaining relevant information, employers must take extra care in taking up references and carrying out other background checks. For example, additional references should be sought and references followed up by phone as well as letter. Following up references with telephone calls is good practice for all recruits.

School Contractors

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.

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, 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. 7

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 identity of these visitors. Written confirmation may take the form of a public statement on the providing organisation's website, a practice adopted by Ofsted. 8

A copy of any written notification should be kept with the SCR

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

http://www.egfl.org.uk/categories/personnel/safe/LAstaff_db.html

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

In all circumstances the Head Teacher must undertake a risk assessment and use their professional judgment and experience in deciding whether a DBS Disclosure is necessary (see below under "starting work pending a DBS disclosure"). Someone who has not obtained an enhanced Disclosure MUST NOT be left unsupervised with children.

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

7 Guidance for Section 5 inspectors on safeguarding children OFSTED April 2008 Page 4

8 Inspecting Safeguarding – Ofsted September 2012 Page 11

that arrangements are in place with contractors to make sure that any of the contractor's staff that come into contact with children undergo appropriate checks. 9

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.

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, providing there is an urgent need, 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.

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.

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

9 Keeping Children Safe in Education July 2015, para 91

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. The Department cannot advise employers whether or not they should employ a particular person. 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

5) Portability (accepting a DBS check undertaken by another employer)

If an employee has been DBS checked, there is no statutory requirement that another DBS check is carried out before taking up a job in a different school or even in a different local authority, provided any break of service is only three months or less. Risk factors to consider include:

- The applicant's criminal record or other relevant information may have changed since its issue.
- The decision made by a Chief Police Officer to disclose information on a DBS certificate was made based on the position for which the criminal record check was originally applied for. You cannot assume that no other intelligence would be disclosed for a different position.
- The information revealed was based on the identity of the applicant, which was validated by another registered body, at the time that the original check was requested. Therefore, you should ensure that the identity details on the certificate match those of the applicant.
- If you are contacted by another organisation about a previously issued criminal record check, any information disclosed can only be passed to individuals who need to see it as part of the recruitment decision.

- You can only confirm whether or not the information provided is the same as on your copy of the DBS certificate.