

# GUIDELINES ON CHECKING CRIMINAL RECORDS

*Updated May 2015  
Human Resources August 2013*

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## ***Important Contacts***

Disclosure and Barring Service:

Telephone

General Enquiries 0870 90 90 811

Website

[www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

[www.businesslink.gov.uk](http://www.businesslink.gov.uk)

Disclosure Scotland

Telephone

0870 609 6006

Website

<http://www.disclosurescotland.co.uk>

United Medicare Limited:

020 8306 2806

Human Resources Support Team:

Extensions 7359 / 7346

## ***Introduction***

We are committed to fulfilling our duty to protect children and adults deemed to be vulnerable to whom it provides a service by ensuring the highest integrity of those appointed to positions of trust and in doing so, complying with the relevant legislation and codes of practice.

We have a duty to protect our clients and the proper running of the business. It is therefore necessary to check the suitability of applicants for positions within the Council.

**This document outlines the policy and the procedure on checking criminal records. Schools should use this policy in conjunction with the Model Schools Recruitment and Selection Policy.**

In all activities, appointing officers are required to apply equality and fairness, ensuring that any decisions not to appoint an individual are objective and relevant to the post.

## ***Policy Statement***

We are also committed to the elimination of discrimination and to equal treatment in employment. This applies to prospective employment and all stages of employment, including recruitment and selection, and the commitment extends to applicants with criminal records.

We will utilise the Disclosure and Barring Service (DBS) as a key element in the making of safer recruitment decisions by checking the background of applicants to determine whether they have a history that renders them unsuited to a position of trust. It should be stressed, however, that whilst DBS checks are vital in the consideration of appropriately staffing posts with access to vulnerable people, this process is just one in a range of pre-employment checks which must be carried out in order to assess the suitability of candidates. Other checks include thoroughly confirming identities, qualifications, taking up references and examining dates of employment histories on application forms. We will only request a Disclosure where it is relevant and lawful to do so.

## ***Scope of the Policy***

This policy applies to all positions that are known as the Exceptions to the Rehabilitation of Offenders Act 1974 and are therefore eligible for DBS Checks. It also covers in respect to any regulated positions as defined by Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, and as amended (in particular, by the Protection of Freedoms Act 2012). This sets out the activities and work which are 'regulated activity', which a person who has been barred must not do.

The Government has scaled back regulated activity to focus on work which involves close and unsupervised contact with vulnerable groups including children. Regulated activity still excludes family arrangements, and personal, non-commercial arrangements.

This policy covers changes that came into force from September 2012, including;

- New definition of regulated activity.
- Repeal of controlled activity.
- Repeal of registration and continuous monitoring
- Repeal of additional information
- Minimum age (16) at which someone can apply for a DBS check.
- More rigorous 'relevancy' test for when the police release information held locally on an enhanced DBS check.

The principles of the policy will also be applied to agency staff engaged in such positions and those in contract / partnership agreements with the organisation.. In such cases we will expect partner organisations either to adopt this policy or to produce their own policy complying with the general principles of this policy.

## ***The Disclosure and Barring Service***

The DBS is an Executive Agency of the Home Office, based in Liverpool, set up to help organisations make safer recruitment decisions.

The Service enables organisations in the public, private and voluntary sectors to make safer recruitment decisions by identifying candidates who may be unsuitable for certain work, especially that involve children or adults deemed to be vulnerable.

Its role is to act as a “**one stop shop**” for the checks which are referred to as “**Disclosures**” and works in partnership with the Independent Safeguarding Authority to carry out a number of different checks.

## ***Disclosure Scotland***

Disclosure Scotland offers a check of “unspent” criminal records through its Basic Disclosure service. Further information on Disclosure Scotland’s Basic Disclosure service can be found at <http://www.disclosurescotland.co.uk/>

It’s role is to provide a basic disclosure criminal record check for all Torbay Council employees who have access to the Public Services Network (PSN) or data during the course of their work.

For further advise on using the correct application form/evidence checking and the process please contact [HRSupport@torbay.gov.uk](mailto:HRSupport@torbay.gov.uk). Guidance is also available in the Recruitment Toolkit <http://insight/index/information/humanresources/recruitmenttoolkit/toolkit7.htm>

## ***Section 1: Definition and Criteria for Criminal Record Checks***

### ***Posts Subject to Criminal Record Checks***

Posts that are eligible for a DBS check are listed on the Home Office Web site and can be found at the following link: [Home Office Eligible Positions Guidance](#)

This lists the professions, offices, employments, work and occupations that are known as the exceptions to the Rehabilitation of Offenders Act (ROA) 1974 to which you can legally obtain a DBS check for. Organisations registered with the DBS can only apply for a DBS Disclosure if the position is included in this list.

Membership of certain professional bodies also falls within the Exceptions Order, namely, medical and nursing, accountancy and legal professions.

### ***Posts Subject to a check of the “Barred List” (Regulated Activity posts)***

Where it is considered that a role is within the definition of regulated activity, then as part of their DBS check the employer should also request the appropriate barred list check (for children, adults or both).

**Positions which met the previous definition of Regulated Activity (i.e. Pre September 2012) are still eligible for an enhanced DBS but the check will only include a barred list check if the position is defined as regulated activity post September 2012.**

Under existing Legislation it remains a criminal offence to offer employment to a regulated activity if that person has been barred. Similarly, employers have a legal duty to refer individuals to the Independent Safeguarding Authority for consideration where an individual has been dismissed or removed from regulated activity (or we would have done had they not have left) because they harmed or posed a risk of harm to vulnerable groups including children, failure to do so is also a criminal offence.

### ***Definition of Regulated Activity in relation to Children (from Sep 2012)***

The new definition of Regulated Activity relating to children is set out in three parts by The Protection of Freedoms Act. A person can be in Regulated Activity because of what they do (activities), where they work (establishments) or who they are (specified position). The new definition of regulated activity relating to children comprises only:

- **Unsupervised activities:** teach, train, instruct, care for or supervise children, or provide advice/guidance on wellbeing, moderate a public electronic interactive service (e.g. Facebook) or drive a vehicle **only** for children (carried out on a frequent, intensive or overnight basis).  
**Note:** you will not be classed as undertaking regulated activity if you are being supervised on a day-to-day basis by someone who is classed as engaging in Regulated Activity.
- **Work for a limited range of establishments** (schools, nursery schools, childcare premises, children's homes, children's centres) with the opportunity for contact with children carried out on a frequent, intensive or overnight basis. A volunteer carrying out supervised activities under reasonable day-to-day supervision by another person who is also engaging in Regulated Activity is not undertaking Regulated Activity, however a supervised paid employee working for a specified establishment **does** come under Regulated Activity.  
**Note:** Activities by a person contracted (or volunteering) to provide occasional or temporary services (which are not teaching, training or supervision of children) is no longer Regulated Activity (e.g. maintenance contractors) but please remember, as stated above, supervised paid employees in specified establishments are in Regulated Activity.
- **Providing healthcare** – provision by a healthcare professional or under the direction or supervision of one. This may include psychotherapy and counselling, first aid administered on behalf of an organisation established for the purposes of providing first aid. This does not include workplace first aiders, members of peer support groups or life coaching.
- **Providing personal care** – physical assistance (or prompting with supervision or training or providing advice or guidance) with eating or drinking because of illness or disability, physical assistance (or prompting with supervision or training or providing advice or guidance) with going to the toilet, washing or bathing or dressing because of age, illness or disability, because of the age, illness or disability.
- Registered childminders and foster carers
- Day-to-day management or supervision of individuals carrying out Regulated Activity relating to children

## Definition of Regulated Activity in relation to Adults

The new definition of regulated activity relating to adults no longer labels adults as 'vulnerable'. Instead, the definition identifies the activities which, if any adult requires them, lead to that adult being considered vulnerable at that particular time. This means that the focus is on the activities required by the adult and not on the setting in which the activity is received, nor on the personal characteristics or circumstances of the adult receiving the activities. There is also no longer a requirement for a person to do the activities a certain number of times before they are engaging in regulated activity.

There are six categories of people who will fall within the new definition of regulated activity:

1. **Providing healthcare** – provision by a healthcare professional **or** under the direction or supervision of one. This may include psychotherapy and counselling, first aid administered on behalf of an organisation established for the purposes of providing first aid. This does not include workplace first aiders, members of peer support groups or life coaching.
2. **Providing personal care** – physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of skin, nails or hair (but not where this involves only cutting hair) because of the adult's age, illness or disability. This also includes anyone who trains, instructs or provides advice on the provision of personal care or those who prompt and then supervise an adult to do one of the above.
3. **Providing social work.**
4. **Assisting with general household matters** – assistance with managing a person's cash, paying a person's bills or shopping on their behalf because of the adult's age, illness or disability.
5. **Assisting in the conduct of people's own affairs.**
6. **Conveying adults** - to, from, or between places, where they receive healthcare, relevant personal care or social work because of their age, illness or disability. This includes hospital porters, patient transport service drivers and assistants, ambulance technicians and emergency care assistants but does not include taxi or licensed private hire drivers.

**Please note:** the frequency test has been removed and an individual only needs to engage in a defined activity **once** to be carrying out Regulated Activity and the new definition removes the word 'vulnerable' when describing Regulated Activity relating to adults.

Certain elements of the original scope of Regulated Activity set out in the Safeguarding Vulnerable Groups Act (SVGA) 2006 will not be changed:

- An adult is a person aged 18 years or over.
- A person whose role includes the day-to-day management or supervision of any person engaging in Regulated Activity, **is also in Regulated Activity.**
- Regulated Activity for adults excludes activity carried out in the course of family relationships and personal, non-commercial relationships.

Family relationships include close family (e.g. parents, siblings, grandparents) and the relationship between two people who live in the same household and treat each other as family. Personal, non-commercial relationships are arrangements where no money changes hands or if any money does change hands it is not part of a commercial relationship (e.g. giving a friend petrol money to drive you to the hospital), and the arrangement is made between friends or family friends.

Further guidance to help you identify the type of workforce that a Disclosure and Barring Service (DBS) applicant will be working in is available at:

<https://www.gov.uk/government/publications/dbs-workforce-guidance>

## Determining the Level of Check Required

There are six types of check that are available. A series of flow diagrams are provided below to enable you to establish which, if any, level of check is required. The checks that are available are:

- **Enhanced DBS Check + Childrens Barred List check** – used when someone is undertaking regulated activity related to children (see diagram 2). This check involves a check of the police national computer, police information and the children’s barred list.
- **Enhanced DBS Check + Adults Barred List Check** - used when someone is undertaking regulated activity relating to adults (see diagram 2). This check involves a check of the police national computer, police information and the adult’s barred list.
- **Enhanced DBS Check + Childrens and Adults Barred List Check - used when** someone is undertaking regulated activity relating to both children and adults (see diagram ). This check involves a check of the police national computer, police information and the adult’s barred list.
- **Enhanced DBS Check** – used where someone meets the pre September 2012 definition of regulated activity. This level of check involves a check of the police national computer and police information.
- **Standard DBS Check** – used primarily for people entering certain professions such as: members of the legal and accountancy professions. Standard DBS checks just involve a check of the national computer and do not include a check of police information or the childrens or adults barred lists.
- **Basic Check** – a new mandatory check introduced in 2014 to verify unspent convictions and applies to all employees with access to the Public Service Network (PSN). There is no requirement for a full check.

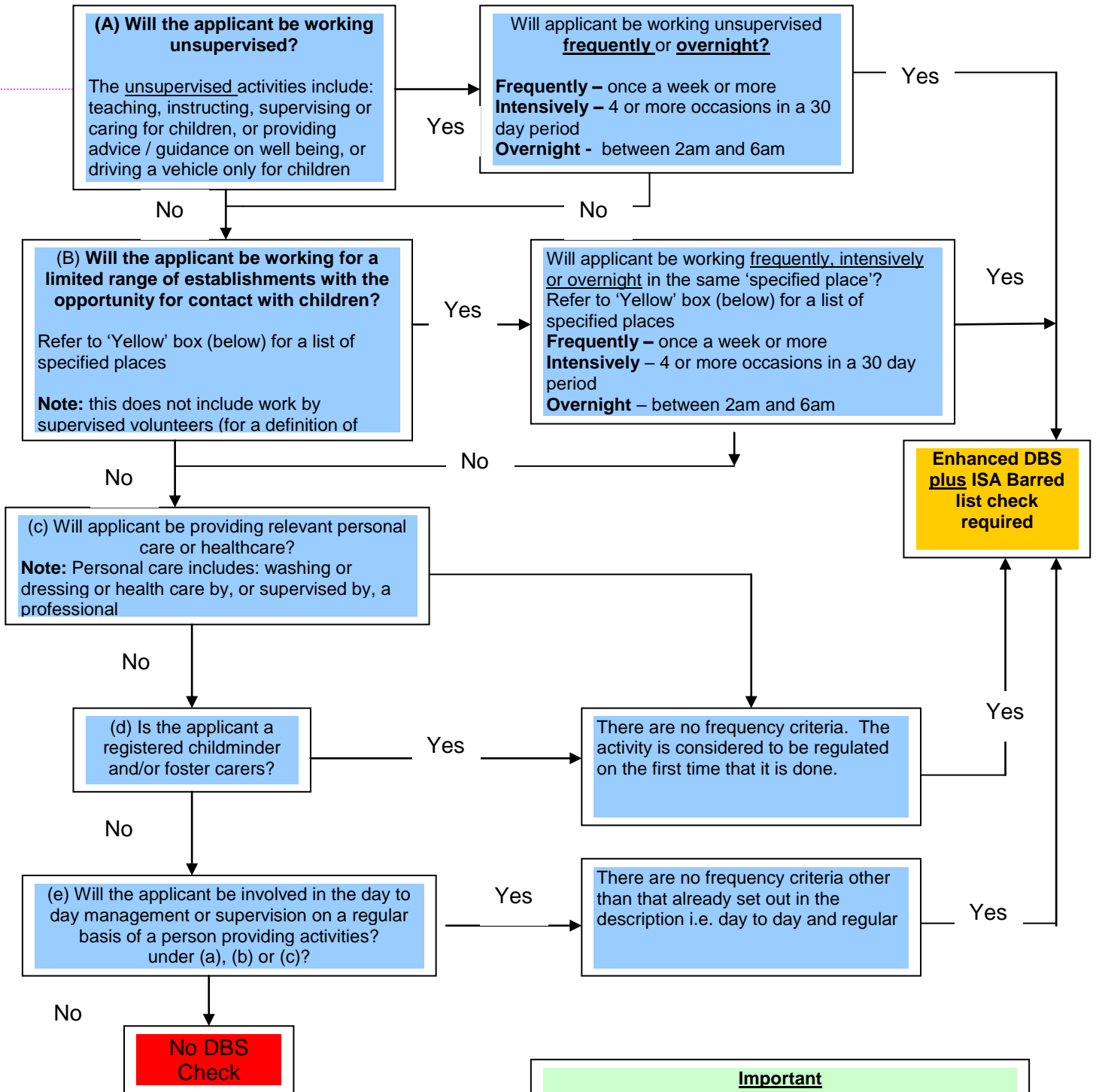
Employees who have access to the Public Services Network (PSN) and data and who are in a role which requires an enhanced DBS check because they are involved in regulated activity there is no requirement to carry out an additional basic check.

The Public Service Network includes:

- gcsx email users
- Customer Information Services users
- Tell Us Once users
- Paris Users



**Diagram 1 Regulated activity relating to Children (Post September 2012 Definition)**



**Important**  
If the individual is supervised, they may still be eligible for an enhanced DBS check.

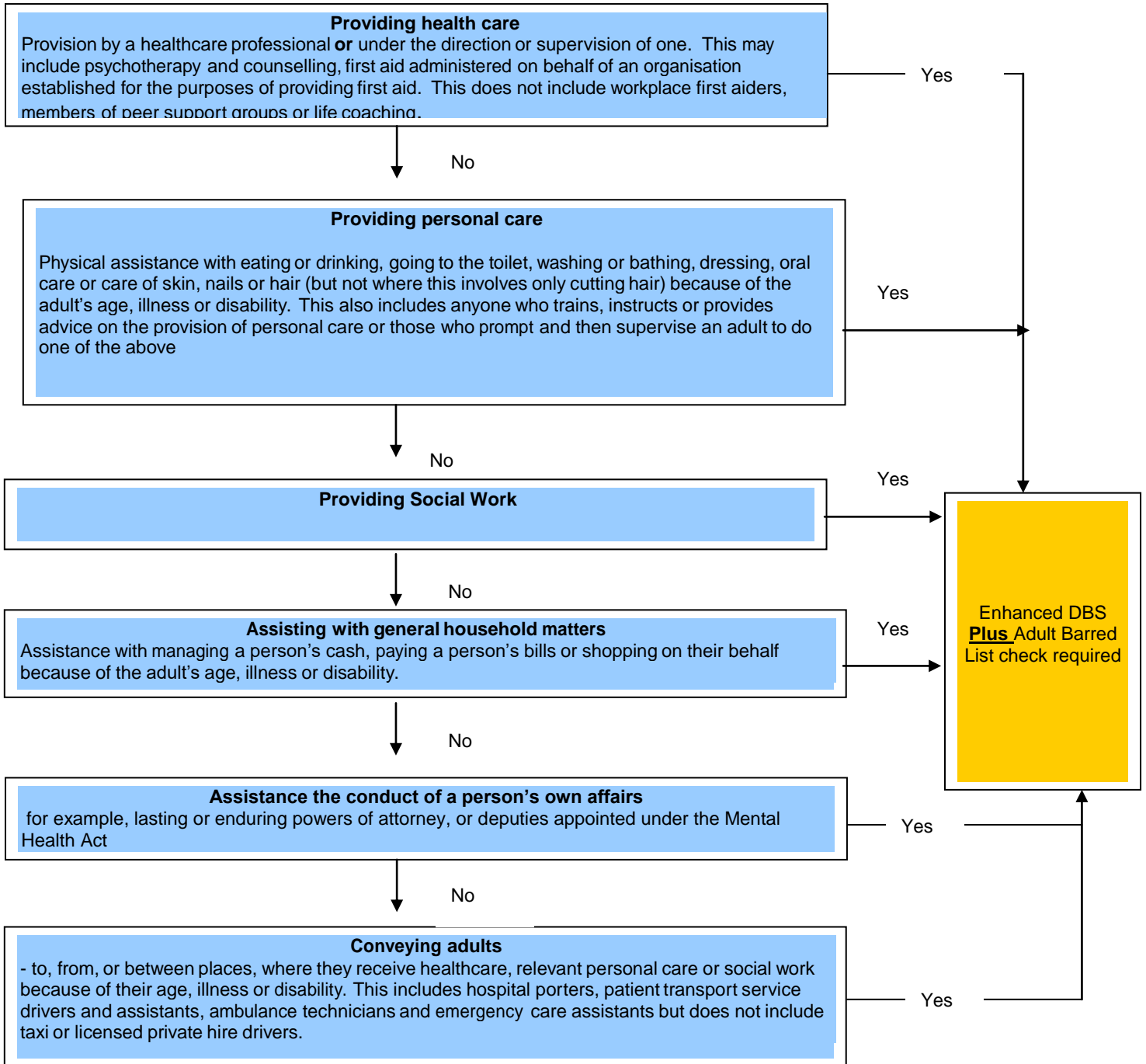
**Important**  
Where the activity is occurring in a specified place, it is only regulated activity if it is frequent or intensive in the same specified place i.e. same school

List of '**specified places**' includes:  
Schools  
Pupil Referral Units  
Nurseries  
Institutions for the detention of children

**Supervision**  
The precise nature and level of supervision will vary from case to case. This means that organisations must ensure that the supervision in place is sufficient, in their judgement, to provide reasonable assurance for the protection of the children concerned. Organisations should consider the following factors in deciding the specific level of supervision the organisation will require in an individual case:  
-the age of the children concerned:

**Diagram 2 Regulated activity relating to Adults (Post September 2012 Definition)**

Regulated activity relating to adults identifies activities which, if any adult requires them, lead to that adult being considered vulnerable at that particular time. There is not a requirement to do the activity a certain number of times before it is considered as engaging in regulated activity. Anyone meeting this definition will require an enhanced DBS check with an adults barred list check



**“Health Care”** includes all forms of health care provided for adults, whether relating to physical or mental health, and includes palliative care. This includes diagnostic tests and investigative procedures. It also includes procedures that are similar to forms of medical or surgical care that are not provided in connection with medical condition, i.e. taking blood from a blood donor or cosmetic surgery.

**For an Enhanced DBS check with no barred list check**  
If an individual does not meet the definition of ‘regulated activity’ as set out above but **does** fall within the old definition of regulated activity.

## ***Who is an Eligible Volunteer?***

The DBS have clear guidance on who is eligible for a free DBS check. The defined criteria is:

'A person who spends their time doing something that aims to benefit either an individual or group (other than, or in addition to, close relatives), and is not paid (except for travelling and other approved out-of-pocket expenses).'

To benefit for a free of charge DBS check, the applicant must not benefit directly from the position the DBS application is being submitted for. The applicant must not:

- Receive any payment (except for travel and other approved out of pocket expenses).
- Be on a Work Placement
- Be on a course that requires them to do this job role
- Be in a trainee position that will lead to a full time role or qualification.

Ineligible posts include; foster cares and members of the same household over 18 years old, individuals working abroad on volunteering projects and medical/teaching/social work students on placement as part of their training. This is because whilst the activity may be entirely voluntary there is usually either some form of payment involved or the work is undertaken primarily to benefit the individual themselves.

If the check does qualify as a voluntary position you must ensure that the volunteer box is clearly crossed on our DBS1 form and that you are as descriptive as possible with the role title i.e. volunteer helper is not acceptable, voluntary school reader or chaperone for children is more suitable.

## ***Age limitations for carrying out a DBS check***

Since September 2012 it has no longer be necessary to carry out a DBS check for anyone under the age of 16 years of age. The Government have removed this requirement in response to criticism of checking and providing certificates for those aged 15 and under.

## ***Safeguarding Young People on Work Experience***

*The advice given in this section is based on guidance from the Department for Education*

### ***Do you or your staff need to have a DBS check if you offer work experience to young people?***

In the vast majority of placements – as the employer – employees involved will not meet the criteria for a DBS check or check of the Barred List.

Around 550,000 work experience placements take place each year and we estimate that DBS checks take place for just 1% of these.

However, DBS checks must be **considered** in all of the following cases:

- 1 students identified by the school as vulnerable for educational, medical, behavioural or home circumstance reasons
- 2 students on placements lasting more than 15 days over an extended time-frame, especially where these involve:-
  - regular lone working with an employer over long periods (rule of thumb would suggest anything over half a day at a time)
  - placements located in particularly isolated environments with **1:1 working**
  - placements involving a high degree of travelling on a **1:1 basis**
- 3 placements which include a residential element

The fact that a particular placement falls into one of the above categories does not necessarily mean that a DBS check will be required. Such a decision will depend on an assessment of the overall potential risks posed to a young person and will take into account any systems in place to minimise these risks.

*Where a DBS check is required, does each member of an employer's staff involved in the work experience have to have a DBS check?*

There is no requirement to DBS vet all staff who may come into contact with a student on a placement. The only person who should ever be considered as requiring a DBS check is the person having day-to-day responsibility for the student – this could be the manager, a supervisor or a mentoring employee.

***Who will advise an employer whether or not a check is required?***

Most schools now use Education Business Partnership Organisations (EBPOs) or other specialist third party organisations to arrange placements with employers. EBPOs and school work experience organisers are able to advise on individual placements and help risk assess the situation in order to determine whether or not a DBS check is required on behalf of the student.

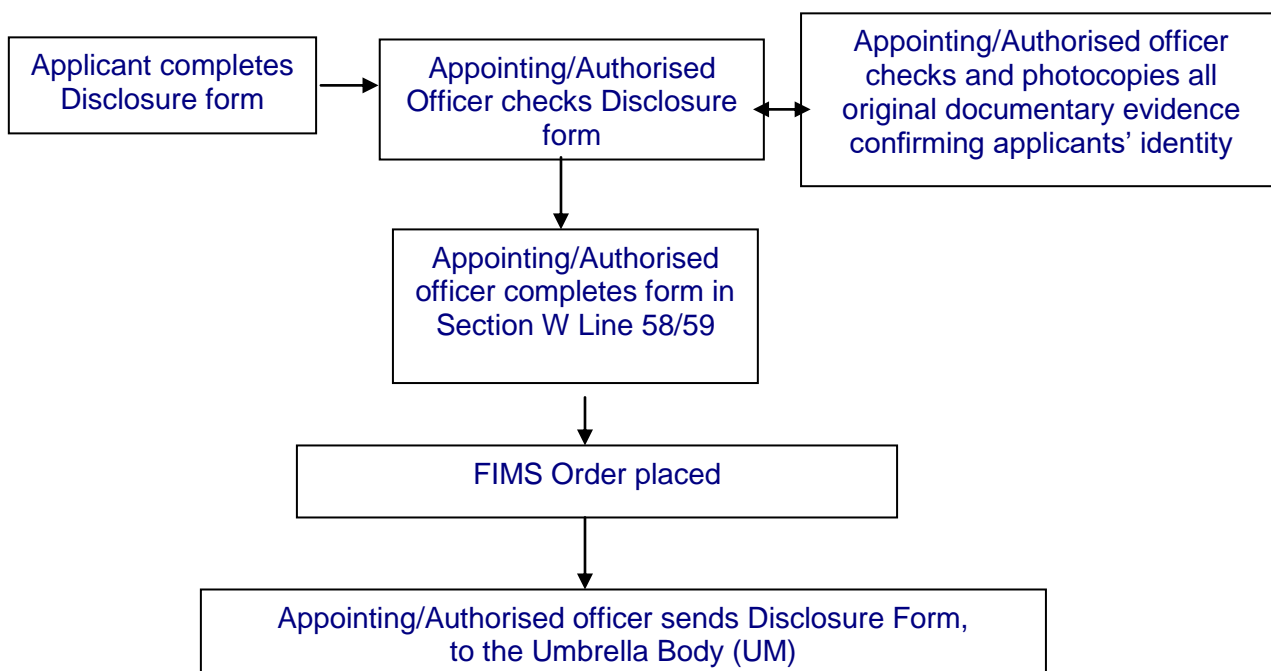
## Section 2: Undertaking Disclosure and Barring Service Checks

The process of requesting completion of the Disclosure Application Form will be applied equally to internal and external applicants applying / being appointed to posts that have been assessed as requiring a criminal record check.

### Completing the Disclosure Application Form

It is the responsibility of either the Appointing Officer or the Authorised Officer to ensure that the form is completed fully and correctly otherwise this can result in delays in the process. The Authorised Officer is the individual who conducts the face-to-face identity checks and ensures that the application form is correctly completed. Authorised Officers must ensure that they check the form through thoroughly and look out for the following common errors:

- Forms being defaced i.e. photocopied, hole punched, stapled, stamped or use of correction fluid.
- Form not completed in black ink or capitals (writing over not accepted).
- Ensuring that section Y has not been completed by the Authorised Officer (this is for United Medicare only to sign).
- No National Insurance number completed (even though guidance says optional, this is required if the person has one).
- Not all previous names or middle names declared.
- Gaps in the 5 years' continuous history or not the full 5 years evidenced.
- Gender box must always be crossed.
- If you have ever been known by any other names you must complete the full name(s) in a5 – a13 as appropriate.



## **Field 61 on the Application form**

The DBS will use a new relevancy test when considering the release of non-conviction information about an individual. It will now be based on the type of workforce and no longer the actual job role. This change means that DBS Certificates can be taken from role to role within the same workforce i.e. when moving between jobs that involve working with children, adults, both or other.

To accommodate this change the DBS has extended the Position Applied For field (X61) to include both lines totalling 60 characters on the application form.

This field must now be completed as follows, failure to complete the field correctly may result in the form being rejected, it may also prevent the applicant from using their DBS Certificate for future employment or volunteering purposes:

**X61 Line 1: Write in one of the following form of words to indicate the relevant workforce(s) i.e.**

- Child Workforce
- Adult Workforce
- Child and Adult Workforce
- Other Workforce

Note: 'Other Workforce' must be written if the person is not working with children or adults.

**X61 Line 2: Enter a description of the 'Position Applied For' up to 30 characters.**

## ***ID Checking***

The most important feature for Authorised Officers is conducting the identity check required with DBS checks. You must ensure that you see all the appropriate original documents and evidence what you have seen in section W on the Disclosure Application Form. ***You are also required to complete an Identity sheet*** with all the documents that you have seen, again this can be found on the intranet.

The DBS has strengthened the identity checking process in order to improve public protection and in particular, make it more difficult for individuals to conceal previous criminal records by changing their name.

## **Identification checking process**

Anyone who has this responsibility must comply with the following:

- You must only accept valid, current and original documentation.
- You must not accept photocopies.

- You must not accept documentation printed from the internet e.g. internet bank statements.
- Identity information for the applicant's name, date of birth and address recorded in Section A and Section B on the DBS application form must be validated.
- You should in the first instance, seek documents with photographic identity (e.g. passport, new style driving licence, etc.) and for this to be compared against the applicant's likeness.
- All documents must be in the applicant's current name as recorded in Section A (see below for guidance on recent changes of name).
- One document must confirm the applicant's date of birth as recorded in Section A.
- You must ensure that the applicant declares all previous change of name, and provides documentary proof to support the change of name.
- You must see at least one document to confirm the applicant's current address as recorded in Section B, in accordance with the guidance.
- You should check that the applicant has provided a full and continuous address history covering the last five years. Where possible you should seek documentation to confirm this address history.
- You should cross-match the applicant's address history with any other information you have been provided with as part of the recruitment, such as their CV. This can highlight if an address has not been given e.g. if the applicant's CV shows that they have worked in Liverpool in the last five years, but the application form only shows London addresses, you may wish to question the applicant further about this.
- A document from each of the groups should be included only once in the document counts e.g. do not accept two bank statements as two of the required documents, if they are from the same bank.
- You should not accept the foreign equivalent of an identity document if that document is listed as '(UK)' on the list of valid identity documents.

## **Process for checking Identification**

There is a three route procedure that has been introduced by the DBS to check an individual's identity.

### **Route One**

All applicants must initially be considered for Route One.

Can the applicant produce a Group 1 document? If yes, then the applicant must produce **3** documents:

- 1 document from Group 1 (refer to list of Valid Identity Documents); and
- 2 further documents from Group 1 , 2a or 2b; one of which must verify their current address.

If the applicant has satisfied this route, then the document check is complete. If the applicant cannot produce a Group 1 document then go to **Route Two**.

**NOTE – EEA Nationals (Non-UK):**

Where an EEA National has been resident in the UK for five years or less, their identity can be validated via Route One through the checking of a Current Passport or Current UK Driving Licence (photo card only) plus 2 further documents.

In the absence of a Group 1 document the applicant can have their identity validated using Route 2, however it is advised that you contact Human Resources where an applicant is unable to provide Group 1 documentation.

**NOTE - Non-EEA Nationals:**

All Non-EEA Nationals should be validated via Route One only.

**Route Two**

In order to have their identity validated via Route two the applicant must produce:

3 documents from Group 2 comprising of;

- 1 document from Group 2a; and
- 2 further documents from Group 2a or 2b; one of which must verify their current address.

**and**

- an appropriate external ID validation check will need to be completed. This is used to check the applicant against their records to establish the applicant's name and living history footprint.

Please contact Human Resources if you need to carry out an external ID validation check.

**Route Three**

Where it has not been possible to validate the applicant's identity successfully, it may be necessary to proceed to Route Three. In these circumstances the Appointing / Authorising Officer should contact Human Resources who will refer the matter to our Registered Body for further advice.

Should the Registered Body still be unable to validate the applicant's identity it is likely that they will return the form to the DBS. The applicant may then need to be sent for fingerprinting by the Police. Should this be required, there is likely to be a further delay to the DBS application process and subsequently to your recruitment processes.



## ***Unspent / Spent Convictions***

On 29<sup>th</sup> May 2013, legislation came into force that provides that certain old and minor cautions and convictions will no longer be subject to disclosure under the Exceptions Order and are deemed to be “filtered”. Filtering is the term that the DBS is using to describe the process which will identify and remove convictions and cautions which should no longer be disclosed on DBS certificates.

The rules as to when a conviction or caution will be filtered are set out in legislation. This states that a certificate must include the following:

- Cautions relating to an offence from a list agreed by Parliament
- Cautions given less than 6 years ago (where individual over 18 at the time of caution)
- Cautions given less than 2 years ago (where individual under 18 at the time of caution)
- Convictions relating to an offence from a prescribed list - see below
- Where the individual has more than one conviction all convictions will be included on the certificate (no conviction will be filtered)
- Convictions that resulted in a custodial sentence (regardless of whether served)
- Convictions given less than 11 years ago (where individual over 18 at the time of conviction)
- Convictions given less than 5.5 years ago (where individual under 18 at the time of conviction)

The list includes a range of offences which are serious and which relate to sexual offending, violent offending and/or safeguarding. It would never be appropriate to filter offences on this list. **A list of offences which will never be filtered from a criminal record check** has been derived from the legislation and is available on the Home Office Website.

This is not the complete list as the legislation also extends to cover similar offences committed under the law of Scotland and Northern Ireland or under laws relevant to the armed services.

### **Can an employer ask an individual to declare details of all convictions and cautions?**

An employer can only ask an individual to provide details of convictions and cautions that they are legally entitled to know.

Where a Standard or Enhanced certificate can legally be requested (this is where the position is one that is listed in the Rehabilitation of Offenders Act 1975 (Exceptions) Order 1975), an employer can only ask an individual about convictions and cautions that would fall under the rules described above. That means only those convictions and cautions that would be disclosed on a DBS certificate.

If an employer takes into account a conviction or caution that would not have been disclosed they are acting unlawfully under the Rehabilitation of Offenders Act 1974.

There are a small number of defined positions where details of all convictions and cautions may be taken into account. These positions do not come through the DBS process. Examples are national security and police vetting.

## ***Self-Declaration***

Successful applicants for positions that are **outside the scope of a DBS Disclosure** will be required to complete a **Self-Declaration Form**.

Applicants will only be required to disclose criminal convictions that we are legally entitled to know (as above) and that are 'UNSPENT'.

Job descriptions should state whether a Self-Declaration will be required:-

"You will be asked to complete a Criminal Records Self Declaration Form. Criminal convictions will only be taken into account when they are relevant to the post. You will only be asked to disclose 'unspent' convictions that are not protected under current guidelines."

Applicants will be asked to declare on their application form if they have any unspent convictions which are not protected (i.e. filtered out) under current guidelines. Information on unspent convictions will also be requested in writing at appointment stage; because of this the Appointing Officer should ask whether a candidate has any unspent convictions that are not protected (filtered out) during the interview.

If an applicant discloses either a "SPENT" or "PROTECTED" (filtered out) conviction – at interview (for instance, if a gap in their employment history is questioned) and they are not applying for a post that is "exempt" from the Rehabilitation of Offenders Act, a record should be made in the interview notes that the information was provided by the candidate in response to a different question and will be disregarded as part of the decision making process. Do not make a record of the nature of the conviction itself.

The Self-Declaration form is provided to the individual by Human Resources, along with the appointment letter. The appointment is made subject to a satisfactory criminal record.

On receipt of an individual's self-declaration form, a member of the HR Support team will confirm the result of the declaration to the appointing officer. If the declaration reveals a conviction, then a further assessment needs to be made on the relevance and risk of the conviction. See guidelines on [Assessing the Relevance of a Criminal Conviction](#).

## ***Fees***

The current **DBS Disclosure fee of £44 per Enhanced** disclosure will be treated as part of the recruitment cost and will be paid by the recruiting Department / School. There is **no fee** from the DBS in respect of Disclosures **for Volunteers**. In addition to the DBS fee, there is an additional **administration fee** of £7.65 plus VAT that will be charged by United Medicare (UM) in respect of its role as Umbrella Body to the recruiting Department / School for every Disclosure processed.

Where an individual joins the Update Service, the fee is £13 per annum, to be paid by the individual and not the Employer.

Where an individual cannot meet the requirements of providing identity checks via Route One, and therefore requires an external identity check, United Medicare will charge an additional £3.00 inclusive of VAT.

## ***Section 3: Disclosure for Existing Employees / Volunteers***

### ***Existing Employees***

Existing employees will be subject to a criminal record check where they apply for a position that meets the criteria for a check and do not have an existing Disclosure at the appropriate level for the position for which they are applying. This applies to both permanent and temporary staff.

### ***Procedure for checking Existing Employees / Volunteers***

Existing employees may also become eligible for a criminal record check in response to changes in guidance, statute or the regulatory standards relating to the nature of the duties of their post. Human Resources will work with relevant managers to plan and implement each review of existing employees as and when guidelines are issued by the Disclosure & Barring Service.

### ***Timetable for the repeat processing of Disclosures***

The HR Support team will send out reminders to managers three months in advance of the repeat processing of a DBS disclosure. DBS disclosures should be repeated for individuals under the following time frames:-

Foster Carers -	Every 3 years
School staff -	At the start of employment and then only if there are safeguarding concerns, a change in role, or a gap in employment of over 3 months (excluding maternity etc). Only Governors who are deemed to be undertaking Regulated Activity can be checked. It is unlikely that this will apply in most cases.
All others -	Every 3 years

## ***Dealing with Positive Disclosures***

Where a Disclosure for an existing employee / volunteer reveals information which suggests unsuitability for continued performance in that role, the individual should be interviewed about the circumstances of the offence. See Section 6 on Assessing the Relevance of a Criminal Conviction.

A decision as to whether the individual may continue or not should be made by the appropriate Manager / Head teacher with the advice of the appropriate HR Advisor. Where it is deemed that employment cannot be continued, consideration will be given to the possibility of redeployment where this is feasible.

## ***Third Parties - Non-Employees and Volunteers***

There are also many instances where individuals whose roles do not fit into the Employee / Volunteer categories nevertheless require a Disclosure. They could be Third Parties or Sub-contractors. The current Torbay Council process does not cover these groups and they should not be included in the applications to United Medicare.

The options open to these groups are the following (for Companies or Volunteer Bodies):-

- Register themselves as a "Registered Body" with the DBS and process their own Disclosures.
- Reach agreement with an "Umbrella Body" to process these on their behalf. An Umbrella Body is a Registered Body that provides access to the DBS to other non-registered organisations. This could be United Medicare but could also be another group acting in this capacity.

## ***Disclosing Criminal Convictions during Employment***

All employees will be required to declare any pending criminal proceedings for which they have been formally charged, any criminal conviction, caution, reprimand, bind-over or final warning received during the course of their employment. Failure to do so may result in disciplinary action being taken against them, as may the nature of the offence (depending upon its impact on their work) and this may result in their dismissal from employment.

## ***Considering the Relevance of Convictions***

We are committed to ensuring that applicants for positions, and existing employees who have had occasion to be checked / rechecked, with a criminal record are treated fairly.

Receipt of a positive Disclosure will not automatically render an applicant or existing employee unsuitable for a position unless stipulated by statute / guidance. For example, individuals will be prohibited from working with children / adults if they are engaged in regulated activity and are

barred from working with children listed on ISA Children's / ISA Adults deemed to be vulnerable barred list.

We will only take into account convictions that are relevant to the position. The overriding consideration will be the duty to safeguard children and / or adults deemed to be vulnerable.

The suitability of an applicant or an existing employee will be reviewed in light of all the information available.

Should the receipt of a positive Disclosure result in an existing employee being deemed unsuitable for the position that they are in, attempts will be made to redeploy them to another role where appropriate. However, this redeployment will be based on a position being immediately available, and the individual will not receive prior consideration or pay protection. Should alternative employment not be available employment will be terminated with due notice.

## **Section 4: Procedure for Processing Disclosures**

### **Advertising Stage**

Job descriptions **AND** Adverts must state if a check is required, and the level of check that will be carried out.:

“This post is deemed to be “Regulated Activity” as classified under the Protection of Freedoms Act 2012, and as such are eligible for checks under the Childrens / and or Adults Barred List. In addition, as this post meets the requirements in respect of exempted questions under the Rehabilitation of Offenders Act 1974, all applicants who are offered employment will be subject to a criminal record check (Disclosure) from the Disclosure and Barring Service before the appointment is confirmed. This will include details of ALL cautions, reprimands or final warnings as well as convictions, whether “spent” or “unspent” except those that are protected under current guidelines. Criminal convictions will only be taken into account when they are relevant to the post.”

#### **OR**

“This post is not defined as Regulated Activity, but does meet the requirements in respect of exempted questions under the Rehabilitation of Offenders Act 1974. Therefore, all applicants who are offered employment will be subject to an enhanced criminal record check (Disclosure) from the Disclosure and Barring Service before the appointment is confirmed. This will include details of ALL cautions, reprimands or final warnings as well as convictions, whether “spent” or “unspent” except those that are protected under current guidelines. Criminal convictions will only be taken into account when they are relevant to the post.”

### **Interviewing Stage**

Where a position requires a Disclosure, the Appointing Officer **MUST** ensure that appropriate questions about candidates’ Criminal / Police records are asked at interview.

Candidates should be asked to bring relevant documentation with them to interview. The Appointing Officer is required to have sight of, photocopy and check **all original documentary evidence** from the applicant confirming his / her identity. See ‘**The applicant’s guide to completing the Disclosure application form**’ available on the intranet, or on the DBS website, which provides a list of documents that can be checked to prove identity.

See separate guidelines on checking for eligibility to work in the UK (or EEA) – this can be found on the Intranet under the Recruitment Toolkit.

## ***Appointment Stage***

A Disclosure application should only be made at the job offer stage **for the successful candidate**. A job offer can be made **subject** to Disclosure. (Because of the fees incurred and the confidentiality of the information provided, do **not** process a Disclosure for all short-listed candidates attending interview).

## ***Checking Applicants from Overseas***

The DBS cannot currently access overseas criminal records or other relevant information as part of its Disclosure service. If you are recruiting people from overseas and wish to check their overseas criminal record, a DBS check may not provide a complete picture of their criminal record that may or may not exist. Equally, the DBS is not involved in the processing of applications made by individuals to overseas authorities and therefore will not be responsible for the contents or the length of time taken for information to be returned.

However, in a small number of cases overseas criminal records are held on the Police National Computer and these would be revealed as part of a DBS check. It is possible to submit an application while the applicant is still overseas but you must still verify the applicant's identity.

### **Certificates of good conduct**

You should try to obtain a certificate of good conduct and any other references from potential overseas employees. The standard of foreign police checks vary. To find out the standard, you should contact either the authorities in a particular country, or their embassy.

## ***Accepting Existing Disclosures / DBS Update Service***

Portability is now a possibility through the DBS "Update Service". This service creates the ability to keep a DBS certificate up to date so that it can be taken with an individual from role to role within the same workforce where the same type and level of check is required.

An original DBS check has to be undertaken first, and then it is up to the individual to decide if they wish to join the Update Service. If this is their choice, they pay annually to register their DBS information on this service.

Once registered, an applicant is able to provide their historic DBS original certificate to a new employer, along with written permission for a registration check to be undertaken. Once in receipt of this and with the permission of the individual, an employer can carry out a check to see if the DBS has been updated.

This service can only be used if the appointing manager is legally entitled to do so and answer yes to the following questions (***NB - If you answer 'no' to any question you cannot carry out a Status Check***):

- Do you have the applicant's consent?
- Are you legally entitled to the same level of DBS Certificate? Standard or Enhanced.
- If you are legally entitled to a Barred List check does the DBS Certificate contain the one you require i.e. Children's list, Adults' list, both or none?
- Does the DBS Certificate contain information which you are legally entitled to see? (***such as Barred List checks?***)
- Is the DBS Certificate for the right workforce – Child, Adult, Both or Other? (This will be indicated in the 'Position Applied For' section and will show which workforce has been used to determine the relevancy of any locally held police information.)

#### **E.g. 1**

An Enhanced DBS Certificate with a check of the Children's Barred List for the Child Workforce can be used by a new employer who requires:

1. An Enhanced DBS Certificate ; and
2. A check of the Children's Barred List; and
3. Where the individual will be working with children only (not adults).

#### **E.g. 2**

An Enhanced DBS Certificate only for the Other Workforce can be used by a new employer who requires:

- An Enhanced DBS Certificate; and
- Has no legal entitlement to a check of the Barred lists; and
- The person will not be working with children or adults.

### **Undertaking a Status Check**

Once you are sure that you are legally entitled to undertake a Status check, and once you have seen the original DBS certificate, you will need to obtain the following details from it in order to undertake the check:

- Their DBS Certificate number
- The current surname of the DBS Certificate holder - as specified on their DBS Certificate
- The date of birth of the DBS Certificate holder - as recorded on the DBS Certificate

### **Step 1**

- Go to [www.gov.uk/dbs](http://www.gov.uk/dbs) and search for the DBS Update Service.
- Enter the name of your organisation.
- Enter your forename and surname.



Enter the details of the DBS Certificate being checked. All of the details requested are mandatory.

- Enter the DBS Certificate number.
- Enter the current surname of the DBS Certificate holder (as specified on their DBS Certificate).
- Enter the date of birth of the DBS Certificate holder (as recorded on the DBS Certificate) in the format DD/MM/YYYY.

## Step 2

You will be presented with the Legal Declaration

*'I confirm I have the authority of the individual to which this DBS Certificate number relates to receive up-to-date information (within the meaning of section 116A of the Police Act 1997) in relation to their criminal record DBS Certificate for the purposes of asking an exempted question within the meaning of section 113A of the Police Act 1997; or in relation to their enhanced criminal record DBS Certificate for the purposes of asking an exempted question for a prescribed purpose within the meaning of section 113B of the Police Act 1997.'*

You must tick the 'I agree with the legal declaration' check box to proceed.

## Step 3

You will be presented with the result of the check which you can print out and then store it safely and securely.

### Possible Results:

**This DBS Certificate did not reveal any information and remains current as no further information has been identified since its issue.**

This means

- The DBS Certificate when issued was blank i.e. it did not reveal any information about the person; and
- No new information has been found since its issue and can therefore be accepted as being still current and valid.

**This DBS Certificate remains current as no further information has been identified since its issue.**

This means

- The DBS Certificate revealed information about the person; and
- No new information has been found since its issue and can therefore be accepted as being still current and valid.

**This DBS Certificate is no longer current. Please apply for a new DBS check to get the most up-to-date information.**

This means

- New information has come to light since the DBS Certificate was issued and you will need to apply for a new DBS check to see this new information.

**The details entered do not match those held on our system. Please check and try again**

This means either:

- The individual has not subscribed to the Update Service; or
- The DBS Certificate has been removed from the Update Service; or
- You have not entered the correct information.

### ***Commencing Employment without a Disclosure***

Where the Council is not the employer, it is advised that where a DBS check is required, an individual **should not** commence work until the DBS check has been completed and identified as acceptable by the recruiting manager. No Torbay Council employee will be able to commence employment until all pre-employment checks (including a DBS where applicable) have been undertaken.

### ***Payment***

For Corporate DBS Disclosures see Guidelines to Managers on the DBS Admin Process available on the intranet.

For School DBS Disclosures see **Invoicing Requirements** which can be found under Schools DBS Check Information on the intranet.

## ***Section 5: Disclosure Result***

Changes in legislation in 2013 mean that since 17<sup>th</sup> June 2013, disclosure applications that have been processed by the DBS will be returned to the individual applicant only. No copy will be sent to the Employer. Appointing managers will be responsible for requesting that the applicant bring their copy of the DBS certificate to them so that this can be viewed and verified. Once viewed and verified as an original, the appointing manager (or appropriate person) should complete the DBS confirmation form and return this to Human Resources (or in the case of schools, retain this on file and Single Central Record). DBS Confirmation forms can be found in the Recruitment Toolkit.

If, having had sight of the DBS, the information given contradicts that provided by the candidate at interview, or if there is information contained within the Disclosure which impacts on the nature of the post the candidate is being appointed to, then a decision will be made as to whether employment can be offered or not, and a discussion will take place with the individual.

It may be that the Disclosure contains information that the applicant was not asked about at interview. In any event, applicants should be given the opportunity to explain the situation before a final decision is made.

It is important to establish the relevance of any convictions in the light of the impact they have on that individual carrying out the job. (See Section 6 [Assessing the Relevance of Criminal Convictions](#)).

### ***Appeals Procedure***

An individual applicant who disagrees with the content of information contained in the Disclosure is entitled to appeal against this directly to the [Disclosure and Barring Service](#), but must do so within 3 months of their DBS being issued. Until the applicant has resolved any dispute, they may not be in a position to bring their DBS disclosure to the appointing manager to view it. Where there is a dispute which is ongoing, the appointing manager should allow reasonable time for this to be resolved. It is advised that appointing managers contact Human Resources where this is the case, to discuss how best to manage this situation.

## ***Section 6: Assessing the Relevance of Criminal Convictions***

The suitability of employment or appointment of a person with a criminal record will vary, depending on the nature of the job / role and the details and circumstances of any convictions. Deciding on the relevance of convictions to specific posts is not an exact science. An assessment of an applicant's skills, experience and conviction circumstances should be weighed against the risk assessment criteria for the job or role in question.

The Appointing Officer needs to identify the risks involved and what precautions would need to be put in place to provide satisfactory safeguards.

### ***Assessing the Offences***

The main focus of decision making should be on determining those offences that are relevant in terms of protecting children and adults deemed to be vulnerable. The relevant categories of offences for most purposes are violent, sexual and drug offences, although it should be borne in mind that all these categories cover a wide range of behaviours from the relatively minor to the most grave.

**The key principle is that otherwise suitable applicants should not be refused jobs because of offences that are not relevant to the job.**

### ***Making the Decision***

In many instances the relationship between the offence and the post / role will be clear enough to decide easily on the suitability of the applicant. In other cases this may not be so clear cut. It should be remembered that no two offences are exactly alike.

Whilst it will not be possible to carry out a thorough risk assessment on each individual it is recommended that the following issues are taken into account as a minimum requirement:-

- The length of time since the offence occurred
- The seriousness of the offence and its relevance to the safety of others (employees, customers, clients, property)
- The circumstances which led to the offence (the influence of domestic or financial difficulties)
- Whether the offence was one-off or part of a history of offending
- Whether the applicant's circumstances have changed since the offence was committed, making re-offending less likely
- Whether the offence has been decriminalised by Parliament
- The degree of remorse expressed by the applicant and his / her motivation to change

## ***Section 7: Confidentiality and Retention of Information***

It is important that the confidential, personal information contained in a Self Declaration / Disclosure is only shared with those who have a need to know and who are required to judge whether the individual is to be appointed or not.

Applicants need to feel that information about their police record will not be disclosed to colleagues unless there is a specific reason for doing so.

It is essential that **no copies of the Disclosure are made or retained within the local work unit (unless there is a legislative requirement to do so) nor should notes be made of the discussions with the applicant, which contain specific reference to the details of the convictions** etc. However, it is permissible to keep notes of the dates on which the matter was discussed, who was present, and the outcome and the reason for this.

The name of the individual, the date, the type and reference number of the Disclosure, the position applied for and the outcome are recorded on the DBS notification form which is then sent to Human Resources (or kept on file in the case of schools). This information will be held centrally within Torbay Council by the Human Resources Department (or in school centrally) and a copy is filed on the individual's personal File.

### ***Retention of Disclosures and Exceptions to Normal Practice***

Once a recruitment decision (or other relevant decision – e.g. for regulatory or licensing purposes) has been made, a recipient of a Disclosure must not retain it, or any associated correspondence, for longer than is necessary for the particular purpose. In general, this should be for a maximum of 6 months.

If it is necessary for a copy of the Disclosure to be shown to OFSTED as part of their Inspection requirements, it can be kept until the next inspection, then destroyed.

### ***Equality Statement***

These guidelines apply equally to all employees regardless of their age, disability, gender, race, religion or sexual orientation. Care will be taken to ensure that no traditionally excluded groups are adversely impacted in implementing this policy. Monitoring will take place to ensure compliance and fairness.

The DBS has a Confidential Checking Process for Transgender Applicants who do not wish to reveal details of their previous identity to the person who asked them to complete an application form for a DBS Disclosure.

## ***Policy Feedback***

Should you have any comments regarding this policy, please address them to the HR Policy Feedback mailbox –

HRpolicy@torbay.gov.uk

## ***History of Policy Changes***

**October 2012** - Changes throughout the policy in relation to the introduction of the Protection of Freedom's Act 2012. Including new definitions of Regulated Activity for Adults and Children.

**July 2014** – Introduction of basic disclosures and Disclosure Scotland

Other related Recruitment policies can be found on the HR intranet page:-

- [Equal Opportunities in Employment](#)
- [Agency Workers](#)
- [Employment of People with a Disability](#)
- [Induction Policy and Guidelines](#)
- [Checking Eligibility to Work in the UK](#)
- [Recruitment Policy](#)
- [Reference Policy](#)
- [Relocation Policy](#)