

Hevingham and Marsham Primary School Partnership P112 Disclosure and Barring Service (DBS) checks policy and procedure

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1. Introduction

To provide quality services to the people of Norfolk, Norfolk County Council (NCC) must ensure the staff it employs, whether paid or voluntary, undertake the appropriate level of Disclosure and Barring Service (DBS) checks where their work will involve children or vulnerable adults. This will safeguard them from harm and ensure NCC meets its legal responsibilities. This policy and procedure has been designed to: -

- ensure NCC adheres to current legislative requirements
- ensure appropriate safeguarding considerations have been taken into account where applicants have convictions or other matters disclosed
- to ensure fairness is afforded to applicants where information has been disclosed from police information sources (i.e. convictions/cautions etc) and careful consideration is given to the relevance in relation to the role have applied for
- to assist, in a practical way, managers who undertake recruitment and who will have responsibility for the following
 - Determining if the post meets the exemption requirements
 - If so, establishing the level of DBS check needed and where an enhanced DBS check is required, whether it is regulated activity so an enhanced DBS check with barred list check(s) can be undertaken

As an organisation using the Disclosure and Barring Service (DBS) to help assess the suitability of applicants for positions working with vulnerable groups, (NCC) is committed to complying with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures and Disclosure information.

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NCC also complies fully with its obligations under the Data Protection Act and other relevant legislation regarding the safe handling, use, storage, retention and disposal of Disclosure information.

2. Scope

It is the responsibility of managers involved in recruitment to adhere to this policy.

3. Regulatory / independent regulatory bodies

The primary role of the Disclosure and Barring Service (DBS) is to help employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children. It enables organisations to obtain criminal record information about prospective employees and volunteers by accessing information from the Police National Computer and local police. The DBS is responsible for deciding who should be barred from working with children or vulnerable adults, or both. In terms of barring the DBS has four main duties:

1. To maintain a list of individuals who are barred from engaging in regulated activity* with children – the DBS Children’s Barred List
2. To maintain a list of individuals who are barred from engaging in regulated activity* with vulnerable adults – the DBS Vulnerable Adults List
3. To reach decisions about whether an individual should be included in one or both barred lists
4. To reach decisions as to whether to remove a person from a barred list

*Regulated activities are the activities that the DBS can bar people from doing. For a definition of regulated activity for adults see Appendix B, and for children Appendix C.

4. The Legislative framework

The requirement for DBS checks is covered by the following legislation:

- The Rehabilitation of Offenders Act 1974
- The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2012
- Safeguarding Vulnerable Groups Act 2006
- Protection of Freedoms Act 2012

5. Requests for Disclosure and Barring Service checks

For employment in certain positions, legislation requires employers to obtain either an enhanced DBS check, an enhanced DBS check with barred list check(s), or a standard DBS check (depending on the job) before allowing the appointment to take effect.

This information is provided to assist the employer in assessing the individual’s suitability for a particular position but is not a substitute for robust recruitment practice. It is important that recruitment best practice is followed, particularly in respect of understanding the reason for any gaps in employment, following up on references and

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conducting a thorough face to face interview etc. Further advice and guidance is available on PeopleNet.

6. Determining the level of Disclosure and Barring check

Legislation indicates which level of check is required for a particular position. When a standard or enhanced level check is to be obtained, the position in question must be one that is exempt under The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2012.

For an enhanced DBS check with barred list check(s) the post must also meet the definition of 'regulated activity' as set out in the Protection of Freedoms Act 2012. These activities are outlined in Appendix B and C.

The level and extent of supervision of a jobholder working with children will impact on whether a position will fall within regulated activity and be eligible for an enhanced DBS check with children's barred list check. Guidance to assist organisations to decide whether the supervision they plan to provide will take the activity being supervised out of regulated activity is included in Appendix C.

7. Levels of Disclosure and Barring Service checks

7.1. Standard DBS check

To be eligible for a Standard DBS check the position must be included in the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2012.

The Standard DBS Check will contain details of all spent and unspent convictions, cautions, reprimands and final warnings held on the Police National Computer.

7.2. Enhanced DBS check

To be eligible for an Enhanced DBS check, the position must:

- be included in the Rehabilitation of Offenders (Exceptions) (Amendment) (England and Wales) Order 2012
- be included in Police Act Regulations
- meet the definition of 'regulated activity' as set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006

The Enhanced DBS Check contains the same level of information as the Standard DBS Check. In addition to this, the police will provide any other non-conviction information from local police records which, following rigorous testing, they reasonably believe to be relevant to the position being considered for employment. This will be shown in both the candidate and NCC copy of the DBS check.

7.3. Enhanced DBS check with barred list check(s)

To be eligible for an Enhanced DBS check with barred list check(s) the role must:

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- be included in the Rehabilitation of Offenders (Exceptions) (Amendment) (England and Wales) Order 2012
- be included in Police Act Regulations
- meet the definition of 'regulated activity' as set out in the Protection of Freedom Act 2012

This process will provide the same information as the enhanced DBS check and, in addition, checks will be made to see if the individual is on the list of people barred from working with children or vulnerable adults (or both if appropriate).

7.4. Common powers

In addition, police may use common law powers to provide information directly to employers in cases where this is necessary, e.g. to prevent harm to others.

8. Recruitment procedure

8.1. Determining if a DBS check is required

It is the recruiting manager's responsibility to determine if a post meets the Rehabilitation of Offenders (Exceptions) (Amendment) (England and Wales) Order 2012 or the Rehabilitation of Offenders (Exceptions) (Amendment) (England and Wales) Order 2014 and then assess which level of check is required. It is therefore important that managers are familiar with the regulated activity criteria and definitions.

8.1.1. Volunteers

The same recruitment considerations should be given to volunteers as paid employees. Checks are required for all volunteers who have regular and unsupervised access to children or vulnerable adults.

Where a volunteer is undertaking a role on a 'one-off' basis i.e. an outing, the volunteer should not be left alone and unsupervised with children or vulnerable adults (including providing assistance with going to the toilet).

8.1.2. Placements

Adult training placements - Where the individual is being deployed on a work placement basis which forms part of a course i.e. an individual undertaking a degree in Social Work, the training provider will remain responsible for the individual. Written confirmation should be sought from the provider that the individual has been appropriately vetted for the role being undertaken.

Work experience - Where work experience is being undertaken in an area where a DBS check is required to work, the work experience individual should not be left unsupervised at any time. Please check with HR Direct whether or not the work experience individual may be required to undertake an enhanced DBS check, or enhanced DBS check with barred list check(s).

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Please note: If the individual on work experience is under the age of 16, they will not be able to be checked as DBS checks can only be undertaken for people over 16 years old.

Supervising placements for individuals under 18 (16 if employed) - employees involved in managing a placement are only required to undergo DBS checks if they are the **nominated supervisor** of the individual, who is under the age of 18 (or 16 if employed) **and** the placement is for at least once a week, on more than three days in a 30 day period, or overnight.

Apprentices - The Criminal Justice Court Service Act (CJCSA) defines a child as someone who is under 18 (under 16 if the child is employed). No apprentice should be younger than 16 so staff are not required to undergo DBS checks to supervise an apprentice.

If the post, being filled by the apprentice legally requires an enhanced DBS Check or enhanced DBS check with barred list check(s), the individual should undergo these checks. If you are unsure which check is required, please contact HR Direct.

For further information on placements for young people or apprentices see Work placements policy and procedure P107.

8.1.3. Administrative & Auxiliary Staff

Following the 2014 Amendment Order, auxiliary and administration staff now require a DBS check if they are:

- working at a children's home or a residential family centre
or
- employed or undertaking work for the purposes of a local authority adoption or fostering service, where in the course of their normal duties they have access to personal or sensitive information about children.

The 2014 Amendment Order however, **does not apply** to auxiliary and administration staff working outside of the services listed above, for whom a DBS check cannot be obtained unless they also undertake work that falls within the definition of regulated activity.

1.1. Other selection / recruitment checks

DBS checks should not take the place of normal selection arrangements and checks. Therefore unexplained gaps in employment history should be satisfactorily accounted for during the interview process; references should be followed up in the usual way, identity and qualification checks carried out, right to work in the UK verified and the pre-employment health check received.

1.2. Norfolk Disclosures

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NCC uses Norfolk Disclosures to process its DBS applications. This online system has an average response time for completion of checks being 5-10 days (this varies from case to case and can be influenced by the time it takes Police Authorities to check against previous addresses). In all cases the Local Police Force have up to 60 days to respond to the request for information from the DBS.

If a DBS check is required, the recruiting manager will need to have access to Norfolk Disclosures. If a manager is not set up as a user they should contact HR Direct so that this can be arranged in advance of the interviews.

The response time should be considered when agreeing a provisional start date with the candidate to ensure the DBS check has been received before the effective date of appointment.

1.3. Commencing work without a DBS check

1.3.1. Individuals working with adults

DBS Adult First is a service provided by the DBS that can be used in cases where, exceptionally, and in accordance with the terms of Department of Health guidance, a person is permitted to start work with vulnerable adults (under supervision) before the DBS disclosure has been obtained. This applies to adult services such as care homes, domiciliary care agencies and adult placement schemes where DBS Certificates are required by law.

The DBS Adult First service checks the individual against the DBS Barred List (adults) as an initial and independent check. Requests for the check must fulfil strict criteria and are allowed only where there is a real danger that staffing levels will fall below statutory obligations; also an enhanced DBS check with barred list check (adults) must have been requested on the DBS application.

In addition to a satisfactory DBS Adult First check, a risk assessment must be completed and approval obtained that it is appropriate to commence the individual prior to the full DBS check being received. The following additional safeguards must also be in place:

- all other recruitment checks must have been undertaken and satisfactory (gaps in employment fully explored, identity and qualification verified, right to work in the UK established, satisfactory references and pre-employment health check received)
- people using the service, or others acting on their behalf, should be contacted at weekly intervals to monitor their satisfaction with the care provided by the new employee and any complaints that may arise acted upon
- people using the service, or others acting on their behalf, should be informed there is information outstanding, and should be advised when it is received
- when the outstanding information is received, and where this is unsatisfactory, the employees' contact with people using the service will end

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- an appropriately qualified and experienced member of staff is appointed to supervise them
- wherever it is possible, this supervisor is on duty at the same time as the new employee, or is available to be consulted
- the employee does not escort people away from the premises unless accompanied by a staff member for whom a full and satisfactory DBS check has been received

1.3.2. Individuals working with adults and children, or children not in an education setting

A DBS Adult First check is not appropriate where a person intends to work with both children and adults. Those working with both groups will need to wait for the DBS Certificate to be returned to find out whether a person is barred from working with children and or adults.

For those working solely with children there is no equivalent quick check of the children's barred list and therefore the DBS Certificate will need to be obtained to establish if a person is barred from working with children.

1.3.3. Individuals working with children in an education setting

Offers of employment to successful candidates must be conditional upon a satisfactory enhanced DBS check with barred list check (child).

Please note: until a satisfactory enhanced DBS check with barred list check (child) has been received the person must not be deployed to work directly with children or in a situation where they can have unsupervised access to children.

However, if an enhanced DBS check with barred list check (child) has been applied for but not received by the time the person is due to start work, discretion can be applied to allow the person to start work provided that the Centre Manager / Headteacher / person with overall responsibility for recruitment is confident that all other pre-employment checks have been carried out and that the person is not deployed to work directly with children or in a situation where they can have unsupervised access to children. In other words, all possible action has been taken to ensure that no risk to children could arise. In these situations, a full risk assessment must be undertaken.

Other pre-employment checks to carry out include:

- obtaining and scrutinising comprehensive information from the person, and taking up and satisfactorily resolving any discrepancies
- obtaining independent professional and character references that answer specific questions to help assess the person's suitability to work with children and following up any concerns
- a face to face interview that explores the person's suitability to work with children as well as their suitability for the post
- verifying the person's identity

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- verifying the person has academic or vocational qualifications claimed
- checking their previous employment history and experience
- verifying that they have the health and physical capacity for the job
- verifying the right to work in the UK
- a check against List 99 information held under Section 42 of the Education Act. This list is maintained by the Department for Education and contains details of those banned or restricted from working in an education setting

It is essential that detailed records relating to the recruitment and selection process for all staff are retained securely as evidence that sound and safe processes have been followed. This includes recording information on the single central record. Recruitment appointment information should be kept on the successful candidate's personal file for the time they are employed plus 7 years. For unsuccessful candidates information should be kept for 6 months.

1.4. Verification of identity checks

Short-listed applicants for posts meeting the requirements for a DBS check will be required to provide proof of identity. The documents acceptable for proof of identity are outlined on the .gov.uk website which can be found under web links on the right hand side of the Disclosure and barring service section of PeopleNet.

The Chair of the interview panel should verify the proof of identity documents provided and either scan or copy the documents and complete the appropriate section on Norfolk Disclosures to initiate the online application. The Chair of the panel may delegate these responsibilities to an appropriate person but remains accountable for their satisfactory discharge. The link to the application can then be emailed to the candidate for them to complete their portion of the application. If the candidate is unsuccessful at interview their details will be deleted from the online DBS system. Please contact HR Direct on 01603 222212 for further information regarding online DBS checks.

Please note: Previous DBS check documentation must not be accepted as proof of identity.

1.4.1. Situations where a previous DBS check can be accepted

When determining the validity or otherwise of any previous DBS check the following criteria should be applied:

- (ii) Where an existing employee is moving without a break to a like position in a similar environment and the level of DBS check required for the old and new posts are the same, no further DBS check is required providing the check is less than three years old. It is important to verify the previous check undertaken was at the same level as that currently required (including ensuring that the appropriate barred list check has been undertaken).

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- (ii) Where an external candidate is taking up a position and has been employed previously by NCC in a similar capacity e.g. Relief Support Worker or other casual type employment, and the gap between employment is less than three months for Children's Services and six months for all other departments, no new DBS check is necessary. The manager will need to seek confirmation of employment dates and whether an enhanced DBS check or an enhanced DBS check with barred list check(s) has been undertaken from the previous line manager.

1.5. Offer of employment

An offer of employment should not be confirmed for posts which require DBS checks until the relevant check has been obtained. It is possible to make a conditional offer subject to receipt of all satisfactory documentation where this is considered appropriate.

It is against the law for a DBS barred individual to seek to undertake work with vulnerable groups from whom they are barred, or for an employer to knowingly employ barred individuals to work with those group(s) in regulated activity.

2. Assessing relevance of criminal records

2.1. Assessing suitability

The suitability for employment of a person will vary according to the nature of the job and the details and circumstances of any convictions. As an equal opportunities employer NCC is committed to ensuring that recruitment decisions are based on relevant facts and criteria.

An applicant's criminal record should be assessed in relation to the tasks and responsibilities they will be required to perform and the circumstances in which the work is to be carried out to ensure the vulnerable groups they will be working with are safeguarded. It is also necessary to consider the element of risk that might be present when making a recruitment decision. The following are some of the areas which should be considered:

- Whether the post involves one to one contact with children or vulnerable adults (including customers, clients)
- The level of supervision the post holder will receive
- Whether the post involves any direct responsibility for finance or any other items of value
- Whether the post involves direct contact with the public (and their vulnerability)
- Whether the nature of the job presents any opportunities for the post holder to reoffend in the workplace
- The length of time since the offence occurred
- Whether the offence was a one-off or part of a history of offending
- Whether the applicant's circumstances have changed since the offence took place

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Where it is identified that a potential employee who would be working with vulnerable adults has a criminal record, a risk assessment must be carried out and the manager should meet with the individual to obtain the relevant information (see DBS risk assessment form F112). At this stage, the manager should indicate they are unable to advise the outcome of the assessment until this has been submitted for further management consideration. The risk assessment should then be submitted to the relevant senior manager for consideration and authorisation.

Managers should consult with the Resourcing Team regarding a risk assessment for posts working with children or young people.

Where information is disclosed from the police using their common powers this must not be fed back to the candidate. A discussion must take place with the police and an agreement reached in terms of the information that will be provided to the candidate to ensure current police investigations are not compromised.

The recruitment decision will need to be made in light of all the information obtained through the DBS check and any details released by the police under their common law powers.

2.2. Decision not to proceed with appointment

If on the basis of the DBS check information, a decision is made not to confirm an offer of employment, it is important applicants are given the opportunity to discuss this with the recruiting manager before any conditional offer of employment is withdrawn. Please contact HR Direct on 01603 222212 for further information.

2.3. Dispute of DBS check contents

An applicant may wish to refute the information given on a DBS check and has the right to query the accuracy of details directly with the DBS through their appeals procedure. In the event of this occurring, you will be notified by HR and must not make a recruitment decision until the outcome of the dispute is known. You will be informed of the outcome by HR and will need to temporarily suspend the appointment process.

3. Protection of personal sensitive data

All information provided as part of the DBS Check process must only be used for the specific purpose for which it is requested and for which the applicant has given consent i.e. to assist with determining the suitability of the individual for employment in a particular position. It should not be used at any other time for other purposes.

3.1. Storage and access

Disclosure information should not be kept on the personal file and must be stored separately and securely, in lockable, non-portable storage containers e.g. lockable filing cabinet. Access to Disclosures (storage containers) must be strictly controlled and limited to those who are entitled to see it as part of their duties.

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3.2. Handling

In accordance with section 124 of the Police Act 1997, Disclosure information may only be passed to those who are authorised to receive it in the course of their duties. It should be recognised that unauthorised revealing of information contained in the Disclosure to anyone not entitled to receive it is a criminal offence.

3.3. Retention

Having made a recruitment decision, Disclosure information should not be kept for any longer than is absolutely necessary. This will generally be for a period not exceeding six months and will be to allow for the consideration and resolution of any disputes or complaints.

If there are circumstances requiring a Disclosure to be kept for longer than six months the DBS must be consulted and full consideration given to Data Protection and Human Rights aspects. Throughout any extended period of retention the same conditions of storage and access will apply.

3.4. Disposal

Disclosures should be destroyed by suitably secure means to ensure they cannot be accessed by anyone who is not authorised to do so. No copy (electronic or otherwise) of the Disclosure will be retained.

Only the following record of a Disclosure may be retained,

- The date of issue
- The name of the subject
- Level of Disclosure
- Position to which subject was recruited
- Unique reference number of the Disclosure

4. Referral to the DBS

A referral should be made to the DBS when an employee is moved from regulated activity, or that person resigns, retires, is made redundant or is transferred to a position which is not regulated because it is believed they have carried out one or more of the following:

- engaged in relevant conduct (see below)
- satisfied the Harm Test; where it is believed that the employee may harm, may cause to be harmed, put at risk of harm or may attempt to harm or may incite another person to harm a vulnerable adult or a child
- received a caution or conviction for a relevant offence

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A referral should be made regardless of whether the action or offence was in connection with the employee's work. The referral should be made to the DBS when the employer has gathered sufficient evidence as part of their own investigations.

In this context, relevant conduct is any conduct:

- That endangers a child or vulnerable adult or is likely to endanger a child or vulnerable adult;
- If repeated against or in relation to a child or vulnerable adult, would endanger them or would be likely to endanger them;
- That involves sexual material relating to children (including possession of such material);
- That involves sexually explicit images depicting violence against human beings (including possession of such images), if it appears to ISA that the conduct is inappropriate; or
- Of a sexual nature involving a child or vulnerable adult, if it appears to ISA that the conduct is inappropriate

If a manager has concerns regarding an employee's conduct they should contact HR Direct on 01603 222212.

5. Overseas applicants

5.1. Obtaining information

The DBS cannot currently access criminal records held overseas so when a DBS check is undertaken it will not, in most cases, reveal if an individual has a criminal record held in another country. Therefore, additional information should be obtained.

If you are recruiting a candidate from overseas and wish to check their overseas criminal record it is the applicant's responsibility to provide the relevant documentation to you, and they will need to contact the relevant Foreign Embassy. A link is available in 'Other Resources' which will take you to the Foreign and Commonwealth Office website to the web page where a list of foreign embassies in the UK is available.

Some countries do have arrangements allowing their citizens to obtain certificates of good conduct or criminal record extracts to show prospective employers. The standard of foreign police checks varies. To find further information in this respect, the applicant should contact either the authorities in a particular country, or their embassy. Please also see the link in 'Other Resources' to the Centre for the Protection of National Infrastructure Site where you will find information on documentation, listed in Country alphabetical groups.

If the foreign check needs translating the embassy of the country concerned may be able to help the applicant. The DBS does not offer a translation service.

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If a DBS certificate contains the details of an overseas criminal record, this will be because it is one of a small number of overseas records that are already held on the Police National Computer. If the individual is being deployed on a placement basis which forms part of a course, then you will need to establish links with the deploying body. This may mean taking up references directly with the body, for example, a University in their country of study. If the deploying body is to remain responsible for the individual, i.e. a training provider, you must seek written confirmation that the individual has been appropriately vetted for the role in addition to seeking the equivalent certificate of good conduct of DBS check from their country of origin.

You must see original documents rather than copies of documents.

5.2. Right to work in the UK

You must establish if applicants from overseas have a right to work in the UK. The Immigration, Asylum and Nationality Act 2006 places an onus on employers to ensure that employees who start work on or after 26 February 2008 have the right to work in the UK. There is a fine of up to £10,000 for negligently employing a worker who is not a resident of a European Economic Area Country. For deliberately employing such workers there will be an unlimited fine or imprisonment.

Before a potential employee commences work, the recruiting manager must check and copy documents which confirm the person's identity and right to work in the UK. A list of acceptable documents can be found on F108a Asylum and Immigration Evidence Check form on PeopleNet. Further information on the sponsorship of overseas workers and preventing illegal working can be obtained via www.ukba.homeoffice.gov.uk.

6. Charging arrangements

NCC will, in most cases, meet the charges levied by the DBS for DBS checks requested in connection with recruitment to NCC positions. However there may be occasions where there are delegated budgets or areas subject to contracts where reimbursement of the fees will be at the discretion of the relevant department/body e.g. schools.

There will be no charge made by the DBS for volunteers.

Charges will be applied to organisations wishing to make use of NCC as an Umbrella Body (see 9 below). The fee for this service will be set by reference to the DBS check charge together with an additional levy for administrative costs incurred by NCC. If the organisation is requesting a volunteer check then the administrative fee only will apply.

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7. Umbrella Body role

NCC is registered with the DBS as an 'Umbrella Body'. This means external organisations can approach us to carry out the role of counter signatory and request DBS checks on their behalf.

In the event of NCC applying for DBS checks in these circumstances, it is important that any organisation is aware that we will advise only on whether the applicant is suitable to be employed in the position in question and will not reveal actual DBS check information directly to them. The DBS check will be retained in the same way and under the same conditions as those for NCC candidates.

It is permissible to reveal DBS check information to an organisation only when NCC is satisfied that the organisation has in place similar policies for dealing with and handling the security of DBS check information, and where the standards meet those of NCC. In view of the difficulties of being assured of the standards applied in external organisations NCC will adopt the procedure detailed above and only advise on suitability.

It is not possible to undertake a DBS check on behalf of an individual operating as a sole trader or in a self-employed capacity, as should any matters be disclosed, there is no one in a position to prevent the DBS applicant from continuing to work despite the existence of matters disclosed.

If an individual in receipt of a personal budget wishes to have a DBS check undertaken on care providers who may otherwise be self-employed, the holder of the personal budget becomes the employer and can access the Umbrella body services to enable their prospective employee to be DBS checked. In this instance the personal budget holder will be advised of the suitability or otherwise of the prospective employee.

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Appendix A - Types of exempt employment and work within the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2012

Excepted Professions

- Medical practitioner
- Barrister (in England and Wales), advocate (in Scotland), solicitor
- Chartered accountant, certified accountant
- Nurse, midwife

Excepted Offices and Employments

- Constables, persons appointed as police cadets to undergo training with a view to becoming constables
- Probation officers appointed under Schedule 3 to the Powers of Criminal Courts Act 1973
- Any employment as a teacher in a school or establishment for further education and any other employment which is carried out wholly or partly within the precincts of a school or establishment for further education (employment being of such a kind as to enable the holder to have access to persons under the age of 18 in attendance at the school or establishment for further education in the course of normal duties)
- Proprietors of independent schools
- Any employment by a local authority in connection with the provision of social services or by any other body in connection with the provision by it of similar services, being employment which is of such a kind as to enable the holder to have access to any of the following classes of person in the course of his normal duties, namely:
 - (a) persons under the age of 18 or over the age of 65;
 - (b) persons suffering from serious illness or mental disorder of any description;
 - (c) persons addicted to alcohol or drugs;
 - (d) persons who are blind, deaf or dumb;
 - (e) other persons who are substantially and permanently handicapped by illness, injury or congenital deformity.
- Any employment which is concerned with the provision of health services and which is of such a kind as to enable the holder to have access to persons in receipt of such services in the course of his normal duties.
- Any employment by a youth club, local authority or other body which is concerned with the promotion of leisure or recreational activities for persons under the age of 18, being employment which is of such a kind as to enable the holder to have access to such persons in the course of his normal duties.

Excepted Regulated occupations

- Any occupation which is concerned in England and Wales, with carrying on a nursing home in respect of which registration is required by section 187 of the Public Health Act 1936 or section 14 of the Mental Health Act 1959; or

The above list is not exhaustive and is provided for guidance purposes only.

Please see the 'Other Resources' section for a full list of exempt employment and work

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as outlined in the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2012.

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Appendix B – Regulated Activity (Adults)

Where activities are provided to any adult which, if any adult requires them, will mean the adult will be considered vulnerable at that particular time, this is a regulated activity.

The Safeguarding Vulnerable Groups Act will no longer label adults as ‘vulnerable’ because of the setting in which the activity is received, nor because of the personal characteristics or circumstances of the adult receiving the activities. This means, for example, anyone providing personal care to an adult is in regulated activity irrespective of whether that occurs in, say, a hospital, a care home, a day care centre, a prison or in sheltered housing.

There is no longer a requirement for a person to carry out the activities a certain number of times before they are engaging in regulated activity. Any time a person engages in the activities set out below, they are engaging in regulated activity.

General points

1. Regulated activity continues to exclude any activity carried out in the course of family relationships, and personal, non-commercial relationships.
 - a. Family relationships involve close family (e.g. parents, siblings, grandparents) and relationships between two people who live in the same household and treat each other as family.
 - b. Personal, non-commercial relationships are arrangements where either no money changes hands, or any money that does change hands is not part of a commercial relationship (for example, gifting a friend money for petrol after they have driven you to the hospital), and the arrangement is made between friends or family friends.
2. An adult is a person aged 18 years or over.
3. A person whose role includes the day to day management or supervision of any person who is engaging in regulated activity, is also in regulated activity.

New definition of regulated activity

There are six categories within the new definition of regulated activity for adults.

1. Providing Health Care

The provision of health care by any health care professional to an adult, or the provision of health care to an adult under the direction or supervision of a health care professional, is regulated activity.

- a. A health care professional is a person who is regulated by one of the following professional regulators:
 - General Medical Council
 - General Dental Council
 - General Optical Council
 - General Osteopathic Council

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- General Chiropractic Council
- General Pharmaceutical Council
- Pharmaceutical Society of Northern Ireland
- Nursing and Midwifery Council
- Health Professions Council

b. 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. Health care also includes procedures that are similar to forms of medical or surgical care that are not provided in connection with a medical condition. An example of this is taking blood from a blood donor or cosmetic surgery.

The provision of psychotherapy and counselling to an adult which is related to health care the adult is receiving from, or under the direction or supervision of, a health care professional, is regulated activity. This would include the provision of psychotherapy and counselling over the telephone. Life coaching is excluded.

First aid, when any person administering the first aid is doing so on behalf of an organisation established for the purpose of providing first aid (for example, St John Ambulance Service), is regulated activity. This includes first aid given by Community First Responders.

A worker employed for another purpose who volunteers, or is designated, to be that organisations first aider is not in regulated activity. For example, a person who works in a department store whose role includes being a first aider is not engaging in regulated activity.

Members of peer support groups (e.g. Alcoholics Anonymous), are not in regulated activity, even if the group is directed or supervised by a health care professional.

All staff who work in community pharmacies and opticians who are not regulated health care professionals will be excluded from regulated activity. For example, a person who works in a high street pharmacy providing health advice to customers over the pharmacy counter will not be in regulated activity.

Staff in GP surgeries or dental practices who do not provide health care (for example, receptionists) will not be in regulated activity.

2. Providing Personal Care

Anyone who provides an adult with physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of the adult's age, illness or disability, is in regulated activity.

Anyone who prompts and then supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without that prompting and supervision, is in regulated activity.

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Anyone who trains, instructs or provides advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability, is in regulated activity.

There is one exception to this. Excluded from regulated activity is any physical assistance provided to an adult in relation to the care of their hair when assistance relates only to the cutting of the adult's hair. This is to ensure hairdressers who cut the hair of patients and residents in hospitals and care homes are not engaging in regulated activity.

Illustrative examples:

- A care assistant in a care home who cuts and files an adult's nails to keep the nails short and safe, because the adult cannot do it themselves, because, for example, they cannot see well enough, would be engaging in regulated activity.
- A beauty therapist who attends a day care centre once a week and provides manicures for anyone who would like one, instead of for people who need them because of their age, illness or disability, is not engaging in regulated activity.
- A volunteer who prepares and serves a meal to an adult in their own home (but does not feed the adult) is not engaging in regulated activity. To be engaged in regulated activity you must provide physical assistance to the person, e.g. spoon feed that person, or you must be prompting and supervising e.g. prompting and supervising a person with dementia, because without it they would not eat, or you must be training or instructing e.g. teaching a person who has suffered a stroke to eat using adapted cutlery.
- A health care assistant on a hospital ward who feeds an adult because they are too frail to feed themselves would be engaging in regulated activity.
- A worker in a care home who reminds a person with dementia to eat their lunch, and ensures they do so is in regulated activity.

3. Providing Social Work

The activities of regulated social workers in relation to adults who are clients or potential clients are a regulated activity. These activities include assessing or reviewing the need for health or social care services and providing ongoing support to clients.

4. Assistance with general household matters

Anyone who provides day to day assistance to an adult because of their age, illness or disability, where that assistance includes at least one of the following, is in regulated activity:

- a. managing the person's cash,
- b. paying the person's bills, or
- c. shopping on their behalf.

Illustrative examples:

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- A volunteer who collects shopping lists and the cash to pay for the shopping from older adults' homes, who then does the shopping on their behalf, would be engaging in regulated activity.
- A befriender who helps a disabled person compile their weekly shopping list is not in regulated activity.

5. Assistance in the conduct of a person's own affairs

Anyone who provides assistance in the conduct of an adult's own affairs by virtue of:

- Lasting power of attorney under the Mental Capacity Act 2005
- Enduring power of attorney under the Mental Capacity Act 2005
- Being appointed as the adult's deputy under the Mental Capacity Act 2005
- Being an Independent Mental Health Advocate
- Being an Independent Mental Capacity Advocate
- Providing independent advocacy services under the National Health Service Act 2006 or National Health Service (Wales) Act 2006
- Receiving payments on behalf of that person under the Social Security Administration Act 1992

is in regulated activity.

6. Conveying

Any drivers and any assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving, health care, relevant personal care or relevant social work, are in regulated activity. The driver does, or the person assists in, such conveying for the purpose of enabling the adult to receive services. Health care, relevant personal care and relevant social work are discussed above.

In addition, hospital porters, Patient Transport Service drivers and assistants, Ambulance Technicians and Emergency Care Assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving, health care, relevant personal care or relevant social work, are also in regulated activity.

Conveying does not include licensed taxi drivers or licensed private hire drivers, and does not include trips taken for purposes other than to receive health care, personal care or social work (for example, trips for pleasure are excluded).

Illustrative examples:

- A person who volunteers to take an adult to and from their GP appointment on behalf of a community group is in regulated activity. It would not matter if that person knows, or is friends with, the adult they were taking to the appointment if the conveying is on behalf of the group.
- A friend who takes their neighbour to a hospital appointment would not be in regulated activity, as this is a personal relationship.

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Appendix C – Regulated Activity (Children)

Regulated activity relating to children comprises of:-

- (i) Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children;
- (ii) Work for a limited range of establishments ('specified places'), with opportunity for contact: for example, schools, children's homes, childcare premises. Not work by supervised volunteers;
- (iii) Work under (i) or (ii) is regulated activity only if done regularly. Regularly means carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period (or in some cases, overnight). The statutory guidance about supervision of activity which would be regulated activity if unsupervised is included in summary form below.
- (iv) Relevant personal care, for example washing or dressing; or health care by or supervised by a professional;
- (v) Registered childminding; and foster-carers

For a full detailed description of the scope of regulated activity for children regarding the above please see 'Other Resources'.

Statutory guidance: Regulated Activity (children) - supervision of activity with children which is regulated activity when unsupervised

This guidance applies when an organisation decides to supervise with the aim that the supervised work will not be regulated activity (when it would be, if not so supervised). In such a case, the law makes three main points:

- there must be supervision by a person who is in regulated activity;
- the supervision must be regular and day to day; and
- the supervision must be "reasonable in all the circumstances to ensure the protection of children".

Managers have the flexibility to determine what is reasonable for their circumstances. While the precise nature and level of supervision will vary from case to case, guidance on the main legal points above is as follows:

1. Supervision by a person in regulated activity / regular and day to day: supervisors must be in regulated activity themselves. The duty that supervision must take place "on a regular basis" means that supervision must not, for example, be concentrated during the first few weeks of an activity and then tail off thereafter, becoming the exception not the rule. It must take place on an ongoing basis, whether the worker has just started or has been doing the activity for some time.
2. Reasonable in the circumstances: within the statutory duty, the level of supervision may differ, depending on all the circumstances of a case. Organisations should

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consider the following factors in deciding the specific level of supervision the organisation will require in an individual case:

- ages of the children, including whether their ages differ widely;
- number of children that the individual is working with;
- whether or not other workers are helping to look after the children;
- the nature of the individual's work (or, in a specified place such as a school, the individual's opportunity for contact with children);
- how vulnerable the children are (the more they are, the more an organisation might opt for workers to be in regulated activity);
- how many workers would be supervised by each supervising worker.

3. In law, an organisation will have no entitlement to do a barred list check on a worker who, because they are supervised, is not in regulated activity.

EXAMPLES

Volunteer, in a specified place

Mr Jones, a new volunteer, helps children with reading at a local school for two mornings a week. Mr Jones is generally based in the classroom, in sight of the teacher. Sometimes Mr Jones takes some of the children to a separate room to listen to them reading, where Mr Jones is supervised by a paid classroom assistant, who is in that room most of the time. The teacher and classroom assistant are in regulated activity. The head teacher decides whether their supervision is such that Mr Jones is not in regulated activity.

Volunteer, not in a specified place

Mr Wood, a new entrant volunteer, assists with the coaching of children at his local cricket club. The children are divided into small groups, with assistant coaches such as Mr Wood assigned to each group. The head coach oversees the coaching, spends time with each of the groups, and has sight of all the groups (and the assistant coaches) for most of the time. The head coach is in regulated activity. The club managers decide whether the coach's supervision is such that Mr Wood is not in regulated activity.

Employee, not in a specified place

Mrs Shah starts as a paid activity assistant at a youth club. She helps to instruct a group of children, and is supervised by the youth club leader who is in regulated activity. The youth club managers decide whether the leader's supervision is such that Mrs Shah is not in regulated activity.

In each example, the organisation uses the following steps when deciding whether a new worker will be supervised to such a level that the new worker is not in regulated activity:

- consider whether the worker is doing work that, if unsupervised, would be regulated activity. If the worker is not, the remaining steps are unnecessary;
- consider whether the worker will be supervised by a person in regulated activity, and whether the supervision will be regular and day to day, bearing in mind 1. above;

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- consider whether the supervision will be reasonable in all the circumstances to ensure the protection of children, bearing in mind the factors set out in 2. above;

and if it is a specified place such as a school, consider whether the supervised worker is a volunteer.

This policy will be adopted in **March 2016**. The date of the next formal review will be: **as required**.

Policy approved by the Governing Body of Hevingham and Marsham Primary School Partnership:

signed.....Chair of Governors

dated.....