

Disclosure and Barring Service Guidance

In December 2012, the Criminal Records Bureau (CRB) merged with the Independent Safeguarding Authority to become the Disclosure and Barring Service (DBS). This has led to a number of changes in terminology such as an 'enhanced CRB' becoming known as an 'enhanced DBS'.

This guidance covers:

- It covers both children and adults at risk
- Eligibility to request a DBS
- New definition of 'regulated activity'
- Barred Lists
- Filtering
- Requirement to include the relevant 'Workforce'
- Single disclosure being sent to individuals only
- Update Service

Eligibility

To request information on spent convictions, the position held must be an exempted occupation for the purpose of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013) by SI 2013 1198. Under the current DBS guidance this means that positions in sport fall under eligibility code 06 and are:

'Any position which otherwise involves regularly caring for, training, supervising or being solely in charge of children or adults at risk'.

Therefore it would generally be expected that roles such as an Instructor, Team Manager and Welfare Officer at a Junior School would be eligible for a DBS, whereas administrative roles such as School Secretary, Chairperson and Treasurer would not be eligible, unless the person undertook additional responsibilities involving contact with children or adults at risk.

The DBS is an executive agency of the Home Office and can help organisations by providing access to criminal record information to be used as part of a safe recruitment process.

The Protection of Freedoms Act has also introduced 16 years old as the minimum age at which someone can apply for a DBS disclosure.

Regulated Activity

Regulated activities are defined as:-

- Unsupervised teaching, training, instruction, care for, treatment or supervision of young people

If a person is carrying out one of these regulated activities, there is a second trigger:-

- That the activity is carried out frequently, i.e once a week, or more than 4 times in a 30 day period, or overnight

This frequency test is not dependent on where the activity is carried out, so doing it 4 times in a 30 day period in 4 different locations/clubs/roles means the frequency has been met.

In making a decision about whether or not someone needs to have a Barred list check, it is most helpful to look at the actual role(s) carried out.

Supervision is not simply a question of whether other people can see and hear the person. It is assessed by looking at whether the supervisor has on-going, day to day responsibility for the protection of young people.

- For example: an Assistant Instructor may take a training session on their own, or in an area away from the main coaching session. The Assistant would then have supervisory responsibility for the safety of the young people they are providing instruction to, and would need an Enhanced with Barred List check done.

The supervision test applies to the worker, not to the protection of the young people. The person having supervisory responsibility must themselves be in a regulated activity, have constant and ongoing responsibility for the worker; be confident and knowledgeable enough to carry out the role, and be prepared to carry the responsibility of such a role.

It is not possible for two people to supervise each other; there must be one person who is responsible for the other(s).

Disclosure and Barring Service Guidance: Consideration needs to be given to what is "reasonable in the circumstance" to ensure the protection of the young people, when thinking about whether the person has supervisory responsibility.

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The things to consider are:-

- The ages of the young people, including whether these vary widely;
- The number of young people the person is working with;
- Whether or not there are workers helping to look after the young people;
- The nature of the persons role;
- How vulnerable the young people are;
- How many people are being supervised by each supervising person.

Regulated activity with adults at risk is defined by the nature of the activity and does not have any supervision or frequency requirements.

The activities which trigger eligibility for an Enhanced with Barred List check for those working with adults at risk are, one or more of:-

- Contact by providing health care (not simple First Aid);
- Contact for personal care e.g. assistance with washing, eating etc;
- Contact for social work;
- Contact for the purpose of assisting with household matters;
- Contact for assistance with personal affairs (ie power of attorney);
- Contact for the purpose of transporting. There is no requirement for a DBS check for someone carrying out any of these activities when they are doing so through a personal relationship.

The types of activity that fall into Regulated Activity with Adults at Risk are clearly set out and in the large part there are no activities that apply for sport and recreation organisations in the mainstream. This means that for the majority of sport and recreation organisations there will be no legal requirements in terms of safeguarding adults at risk because there are no individuals deemed to be in Regulated Activity. However, best practice states that sport and recreation organisations should be conducting DBS checks (even if they are not entitled to Barred Lists Checks) on all individuals who have an opportunity to build up a relationship of trust with Adults at Risk.

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Barred lists

The Richard Inquiry found responsibility for deciding if a person is suitable to work with children or vulnerable adults should be managed centrally, leading to the creation of two barred lists – the Children’s Barred List and the Adult’s Barred List.

An individual might be placed on a barred list because of a conviction or caution, or because they have harmed or pose a risk of harm to a child or vulnerable adult. These decisions are legally binding and a barred person must not undertake regulated activity with the group they are barred from working/volunteering with.

It is now also possible to complete an enhanced DBS check without checking the Barred Lists for a role which is not regulated activity (for example because the role is always supervised). The Police National Computer stores information on cautions, reprimands, warnings and convictions. Subject to a relevancy test, the Police may also release information which is considered appropriate for disclosure such as details of a serious allegation or previous charges.

Please note the following legal requirements:

- A person who is barred from working with children or vulnerable adults will be breaking the law if they work or volunteer, or try to work or volunteer with those groups.
- A School/Academy which knowingly employs someone who is barred to work with those groups will also be breaking the law.
- If your School dismisses a member of staff or a volunteer because they have harmed a child or vulnerable adult, or you would have done so if they had not left, you must complete a referral to the DBS.

If you need any advice on the Barred Lists or DBS referrals, please get in touch with the relevant NGB or Local authority

Filtering

Following a judgment from the Court of Appeal, the DBS will now be removing certain specified old and minor information from DBS checks in a process known as ‘filtering’. If a person has more than one conviction or caution, then all details will always be included and filtering will also not remove information relating to sexual, violent or safeguarding offences. More information on filtering is available on www.gov.uk/government/publications/dbs-filtering-guidance

Please note that rather than ask about all prior offences, self-disclosure forms (which are recommended for use as part of a good recruitment process for eligible positions) should be amended to now take account of filtering and ask:

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Do you have any convictions, cautions, reprimands or final warnings which would not be filtered in line with current guidance? If you are not certain again please refer to www.gov.uk/government/publications/dbs-filtering-guidance

Workforce

It is now mandatory to include the relevant 'workforce' when applying for a DBS check. This change is to give the police the information they need for their relevancy test and is used if they join the Update Service.

The relevant workforces are:

- Child Workforce
- Adult Workforce
- Child and Adult Workforce
- Other Workforce (this should not apply in Martial Arts as it is intended for positions that do not involve working/volunteering with children or adults e.g. security guard)

DBS applications through the online application system used by Martial Arts have the default settings of enhanced with Children's Barred List for roles in the Child Workforce. DBS Verifiers can alter these settings if required.

Single DBS Disclosures

From the 17th June 2013, organisations will no longer be automatically sent copies of completed DBS disclosures. This means that through the online system, Clubs/Schools/Academies will be notified when a disclosure is issued and whether it is clear of information or not. When there is content on the disclosure, School/academies/NGBs will need to see the original disclosure to make a risk assessment on the information and decide if the individual is suitable to take up their role. The individual will be requested to supply their disclosure and advised that they may be temporarily suspended if they fail to send their disclosure, under normal circumstances, within two weeks.

Update Service

NGB will be using the DBS 'Update Service', this is a facility where an individual can register (within 14 days of their disclosure being issued) so that employers can go online, with the individual's consent, to carry out a free and instant check to find out if the information released on the DBS certificate is still current and up-to-date. The service is free to volunteers but has an annual subscription cost of £13 for employees.

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Please note to use the DBS for other roles, they must be within the same workforce (e.g. children's) and require the same level of check (e.g. enhanced).

Accessing DBS checks

Please see the dedicated DBS pages on the safeguarding section of the relevant NGB website for the latest information on accessing DBS checks.

More information on DBS checks is available on the DBS website and from the Sport & Recreation Alliance:

www.sportandrecreation.org.uk

<https://www.gov.uk/government/organisations/disclosure-and-barring-service>

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