

## Response from Disclosure and Barring Service (23.11.18)

The position of 'Local Authority Councillor' is not in itself eligible for the Enhanced Level Disclosure as it is not included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

As you will be aware, from the 10 September 2012, Regulated Activity has been amended. If the councillors/elected members fall within the old definition of Regulated Activity (explained below) they are eligible for an enhanced DBS check without a check of the barred lists.

### Pre 10 September 2012 Guidance

With regards to working with children, to be eligible for an enhanced check, a member of the Council would need to be working in Regulated Activity as defined in the Safeguarding Vulnerable Groups Act 2006 Schedule 4, part 1 paragraph 1 (9).

9) The exercise of a function of a person mentioned in paragraph 4 (1) is a regulated activity relating to children.

#### 4. Positions –

For the purposes of sub-paragraph 4 (1)(b), a person is a member of a relevant local government body if—

- a) he is a member of a local authority and discharges any education functions, or social services functions, of a local authority;
- b) he is a member of an executive of a local authority which discharges any such functions;
- c) he is a member of a committee of an executive of a local authority which discharges any such functions;
- d) he is a member of an area committee, or any other committee, of a local authority which discharges any such functions.

With regards to vulnerable adults, to qualify for an enhanced check the council members would need to meet the criteria in schedule 4, part 2 paragraph 7 (9).

9) The exercise of a function of a person mentioned in paragraph 8 (1) is a regulated activity relating to vulnerable adults

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(1) The persons referred to in paragraph 7(9) are –

- a) member of a relevant local government body;

(2) For the purposes of sub-paragraph (1)(a), a person is a member of a relevant local government body if—

- a) he is a member of a local authority and discharges any social services functions of a local authority which relate wholly or mainly to vulnerable adults;

- b) he is a member of an executive of a local authority which discharges any such functions;
- c) he is a member of a committee of an executive of a local authority which discharges any such functions;
- d) he is a member of an area committee, or any other committee, of a local authority which discharges any such functions.

(3) Any reference in sub-paragraph (2) to a committee includes a reference to any sub-committee which discharges any functions of that committee.

To clarify, on the 10 September 2012 the Protection of Freedom Act 2012 provided a new definition of regulated activity. Part of the amendment was that all “positions” within Office Holders (England) and some for Wales have been removed e.g. member of a relevant governing body etc.

However, everybody within the pre-September 2012 definition of regulated activity, will remain eligible for enhanced level DBS checks, whether or not they fall within the post-10 September 2012 definition of regulated activity. They would no longer be eligible for barred list checks, unless they fall within the post-definition of regulated activity.

**Otherwise, you can apply for a Basic level check.** We can do Basic checks for roles in England and Wales. You can find out more about this on our website.

Basic checks show ‘unspent’ convictions. If you are unsure what this means, you can check with [NACRO](#) or [UNLOCK](#). These are organisations set up to give advice on criminal records. This type of check would provide some assurance to parents over your integrity.