

## What is Regulated Activity with Children?

This is a key question to ask when deciding what level of Disclosure to request and whether to check of the Barred Lists should be requested, as part of the Enhanced Disclosure. The main aspects for decision should be centred around the following questions, and each organisation should assess this for themselves. The eligibility for carry out Regulated Activity with Children is broadly broken down into two categories.

### 1. What work will the role involve?

Included in this assessment should be factors such as:

- Will the work involve teaching, training or supervising children?
- Will the work be supervised?
- Will the employee be carrying out the work frequently? (defined as once a week or more often, or on 4 or more days in a 30day period, or overnight in the same establishment)
- Will the work involve the provision of Health Care or Personal Care to a child (this does not have to be done frequently as defined above)

### 2. Where will the work be carried out?

1. will the work be carried out in A 'Specified Place'? (including schools, pupil referral units, nursery schools, institutions for the detention of children, children's homes or children's centres in England, childcare premises)

AND:

- Be done frequently (same definition as above)
- Done by the same person engaged in work for or in connection with the purposes of the establishment
- Give the employee an opportunity to have contact with children
- Exceptions to this group are the following:
  - Activity by a person contacted (or volunteering) to provide occasional or temporary services (not teaching, training or supervision of children)
  - Volunteering, undertaken regularly in a number of different establishments, but only infrequently in each: each establishment is only arranging activities infrequently, so each establishment is not regulated activity provider in relation to that activity

Excluded from Regulated Activity with children – the following activities are not classed as Regulated Activity by the DBS:

- Family arrangements and personal, non-commercial arrangements e.g. looking after a friend's child unpaid.
- A person within a group assisting another member of the group (termed peer exemption')
- Incidental contact – the presence of children is unforeseen, and the activity is not being provided to children.

## **What is the difference between 'Child Workforce' check and the Barred lists for Children?**

**Child Workforce** – this indicates the Local Police Force(s) that the applicant will be working with children to ensure that they release an 'Approved Additional Information' relating to this group. This information will be checked at Stage 4 of the application process and the Local Police Force are given further guidance about the information they should include when responding to a 'child workforce' check.

**Under 18s Vetting and Barring List** – this includes the above information plus a check of the relevant Vetting and Barring lists controlled and maintained by the DBS, together with a check of Section 142 of the Education Act 2002 (previously called List 99). These lists contain the names of all those people barred from working with people U18. This will be included (if requested) at Stage 3 of the application process with the DBS and will appear on the Disclosure if they are.

## **What is Regulated Activity with Adults?**

This is a key question to ask when deciding what level of Disclosure to request and whether to check of the Barred Lists should be requested, as part of the Enhanced Disclosure. The main aspects for decision should be centred around the activities, and each organisation should assess this for themselves. The eligibility for carry out Regulated Activity with Adults is broadly broken down into six categories.

### **What work with adults is staff carrying out?**

1. Providing health care
  - This includes health care work undertaken by (or under supervision from) a regulated Health Care Professional e.g. regulated by GMC or HPC
  - Health care includes all forms of health care relating to physical or mental health including palliative care.
2. Providing personal care
  - Includes providing an adult with physical assistance with eating, drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin because of the adults age, illness or disability (this includes someone who prompts and then supervises an adult to undertake the above actions as they are unable to make a decision for themselves)
  - Anyone who trains, instructs or provides guidance to an adult on the above actions because of their age, illness or disability is in Regulated Activity
3. Providing Social Work
  - The activities of a regulated Social Worker in relation to adults who are clients or potential clients are a Regulated Activity. This includes assessing the need for health and 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 as least one of the following, is in regulated activity.
    - i. Managing the person's cash
    - ii. Pay the person's bills, or
    - iii. Shopping on their behalf
5. Assistance in the Conduct of a Person's Own Affairs

- Regulated Activity includes 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 Advocated
  - Being an Independent Mental Capacity Advocate
  - Providing independent advocacy services under the National Health Services Act 2006
  - Receiving payments on behalf of that person under the Social Security Administration Act 1992.

#### 6. Conveying

- This includes any drivers or assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will receive health care, relevant personal care or relevant social work (as above) Hospital porters, Patient Transport Service drivers and assistants are also included in this group
- This does not include licensed taxi drivers or licensed private hire drivers unless they are undertaking trips taken for the above listed purposes.

Excluded from this list of roles is any activity carried out in the course of family relationships, and personal, non-commercial relationships, for example a family friend driving a friend to their hospital appointment for petrol money. In the guidance provided an Adult is classed as anyone 18 years old or older.

Management functions – A person whose role includes the day to day management or supervision of any person who is engaging in Regulated Activity with adults, is also in Regulated Activity.

The above activities only need to be done once by an employee, to be classed as Regulated Activity with adults

#### **What is the different between an 'Adult Workforce' check and the Barred Lists for Adults?**

**Adult Workforce** – this indicates to the Local Police Force(s) that the applicant will be working with vulnerable adults to ensure that they release any 'Approved Additional Information' relating to this group. This information will be checked at Stage 4 of the application process and the Local Police Force are given further guidance about the information they should include when responding to an 'adult workforce' check.

**Vulnerable Adults Barred List** – this includes the above information plus a check of the relevant Vetting and Barring Lists controlled and maintained by the DBS. These lists contain the names of all those people who are **barred** from working with Vulnerable Adults. This will be included (if requested) at Stage 3 of the application process with the DBS and appear on the applicant's Disclosure if they are.

### **The pre-September 2012 definition of Regulated Activity**

It is important to take note of this definition as this will determine if an employer can request an Enhanced Level Disclosure without a check of the DBS Barred Lists for working with Children or Adults.

The pre-September 2012 definition of Regulated Activity included anyone working closely with children or vulnerable adults, either paid or unpaid, not part of a family or personal arrangement, on a frequent, intensive or overnight basis. Frequent meaning once a week or more (except in health or personal care services where frequent means once a month or more); intensive means on four days or more in a single month. You can view the full DBS guidance relating to Pre-September 2012 eligibility.

### **Why is this definition still important?**

Under the changes that were introduced as part of the Protection of Freedoms Act 2012 the definition of Regulated Activity was changed, with a view to reducing the number of Barred List checks that employers would request. Under guidance provided at the time it was anticipated that there would be a reduction in requests for Barred List checks, from 9 million per year to 5 million per year. This guidance also confirmed that any role that was previously eligible for an Enhanced level Disclosure would remain eligible for an Enhanced level check, but only those meeting the new definition of Regulated Activity could have a Barred List check. This created a new level of check which was the ***Enhanced Level check without a check of the Barred Lists***.

### **What information does an Enhanced level Disclosure without the Barred lists provide?**

This level of check will provide the following information:

- A check of the Police National Computer for any non-filtered\* convictions, cautions reprimands or warning
- A request for 'Additional Approved Information' from the Local Police Force (LPF)

## **What are the DBS Filtering Rules for criminal check certificates?**

On the 29th May 2013 legislation came into force that removed certain old and minor conviction information, from the Exceptions Order of the Rehabilitation of Offenders Act. In practical terms this means that not all conviction information will be displayed on a Standard or Enhanced DBS Disclosure. These rules are described as the DBS Filtering Rules.

Those 18 years old or over at the time of offence

**Convictions** will be removed if:

- 11 years have passed since the date of the conviction; AND
- it is the individual's only offence, AND
- it did not result in a custodial sentence

**Cautions** will be removed after 6 years

Those under the age of 18 at the time of offence

**Convictions** will be removed if:

- Same rules apply as above however the elapsed time is reduced to 5.5 years

**Cautions** will be removed

- Same rules apply as above however the elapsed time is reduced to 2 years.

Information never Filtered from a Certificate

The DBS Filtering Rules stipulated that the following information **MUST** be included on the following, and so will never be Filtered from a Certificate:

- Cautions relating to an offence from a list agreed by Parliament
- Convictions relating to an offence from a prescribed list (see DBS website for list)
- Where the individual has more than one conviction, all convictions will be included.
- Convictions that resulted in a custodial sentence

## **Documentation for a basic Criminal record check**

The documents required for a basic level criminal record check are listed below, with at least one confirming the applicants **date of birth** and one confirming the **current address**. As part of the process DBS will ask for three documents to ensure the minimum requirements are met.

If an applicant is unable to provide the correct combination or number of documents meeting the DBS requirements, they will be unable to apply for a basic level criminal record check.

### **Routes of application – combination requirements**

Route 1

- The applicant must provide three documents as a minimum
- One document must be from Group 1
- Two more documents from any group
- Documents must confirm the name, date of birth and current address of the applicant

Route 1a

- This route is for **Non-EEA applicants only**
- The applicant must provide three documents in total
- One document must be from Group 1a, with the corresponding document requirements
- Two more documents from any group
- Documents must confirm the name, date of birth and current address of the applicant

Route 2

- The applicant must provide three documents as a minimum
- At least one document must be from Group 2a
- Two more documents must be from Group 2a or 2b
- Documents must confirm the name, date of birth and current address of the applicant

**What documents are accepted?**

Below is a list of the documents that the DBS accept in support of a Basic Criminal Record Check application. The notes provide further guidance on the requirements for each document. Please read these carefully as some documents can change group or require supporting documents to validate them. For example, a Birth Certificate issued within 12 months of the date of birth is a Group 1 document, if it issued after this it becomes a Group 2a document.

<b>Group 1: Primary identity documents</b>	
<i>Document</i>	<i>Notes</i>
<b>Passport</b>	Any current and valid passport
<b>Biometric residence permit</b>	UK
<b>Current photocard driving licence</b>	UK/Isle of Man/Channel Islands and EEA (full or provisional). All licences must be valid in line with current DVLA requirements
<b>Birth certificate – issued within 12 months of date of birth</b>	UK and Channel Islands – including those issued by UK authorities overseas, eg embassies, High Commissions and HM Forces
<b>Adoption certificate</b>	UK and Channel Islands

<b>Group 2a: Trusted government documents</b>		
<i>Document</i>	<i>Notes</i>	
<b>Current driving licence – photo card (non-EEA)</b>	All countries (full or provisional) (Excluding UK/Isle of Man/Channel Islands and EEA). All licences must be valid in line with current DVLA requirements	
<b>Current driving licence – paper version</b>	UK/Isle of Man/Channel Islands and EEA (full or provisional). All licences must be valid in line with current DVLA requirements	
<b>Birth certificate – issued more than 12 months after date of birth</b>	UK, Channel Islands and Isle of Man	
<b>Marriage/civil partnership certificate</b>	UK and Channel Islands	
<b>HM Forces ID card</b>	UK	
<b>Firearms licence</b>	UK, Channel Islands and Isle of Man	
<b>Non EEA Immigration Document/Visa/Work permit</b>	Valid only for roles whereby the applicant is living and working outside of the UK. Visa/permit must relate to the non EEA country in which the role is based	
<b>Group 2b: Financial and social history documents</b>		
<i>Document</i>	<i>Notes</i>	<i>Issue date and validity</i>

<b>Mortgage statement</b>		Issued in last 12 months
<b>Bank or building society statement</b>	UK and Channel Islands or EEA	Issued in last 3 months
<b>Bank or building society account opening confirmation letter</b>	UK	Issued in last 3 months
<b>Credit card statement</b>	UK or EEA	Issued in last 3 months
<b>Financial statement, e.g. pension or endowment</b>	UK	Issued in last 12 months
<b>P45 or P60 statement</b>	UK and Channel Islands	Issued in last 12 months
<b>Council Tax statement</b>	UK and Channel Islands	Issued in last 12 months
<b>Letter of sponsorship from future employment provider</b>	Non-UK or non-EEA only. Valid only for applicants residing outside of the UK at time of application	Must still be valid
<b>Utility bill</b>	UK – not mobile telephone bill	Issued in last 3 months
<b>Benefit statement, e.g. Child Benefit, Pension</b>	UK	Issued in last 3 months
<b>Central or local government, government agency, or local</b>	UK and Channel Islands	Issued in last 3 months

<b>council document giving entitlement, e.g. from the Department for Work and Pensions, the Employment Service, HMRC</b>		
<b>EEA National ID card</b>		Must still be valid
<b>Irish Passport Card</b>	Cannot be used with an Irish Passport	Must still be valid
<b>Cards carrying the PASS accreditation logo</b>	UK, Channel Islands and Isle of Man	Must still be valid
<b>Letter from head teacher or college principal</b>	UK – for 16 to 19 year olds in full time education. Only used in exceptional circumstances if other documents cannot be provided	
<b>Non EEA Bank or building society statement</b>	Valid only for roles whereby the applicant is living and working outside of the UK. Statement must relate to a bank or building society from the non EEA country in which the role is based.	Issued in last 3 months

Group 1a: Primary identity documents for non-EEA nationals	
A <b>Permanent Residence Card</b> issued by the Home Office to the family member of a national of a European Economic Area or Switzerland.	UK
A current <b>Biometric Immigration Document</b> (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.	UK
A current <b>Passport endorsed</b> to show that the holder is exempt from immigration control, is allowed to stay <b>indefinitely in the UK</b> , has the right of abode in the UK, or has no time limit on their stay in the UK	Any current and valid Passport
A current <b>Immigration Status Document</b> issued by the Home Office to the holder with an endorsement indicating that the named person is <b>allowed to stay indefinitely</b> in the UK or has <b>no time limit</b> on their stay in the UK, together with an official document giving the person's <b>permanent National Insurance number</b> and their name issued by a Government agency or a previous employer	UK, must be provided with a Passport
A current <b>Passport endorsed</b> to show that the holder is allowed to stay in the UK and is currently allowed to do the <b>type of work</b> in question	Any current and valid Passport
A current <b>Biometric Immigration Document</b> (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to do the work in question.	UK

<p>A current <b>Residence Card</b> (including an Accession Residence Card or a Derivative Residence Card) issued by the Home Office to a non-European Economic Area national who is a family member of a national of a European Economic Area country or Switzerland or who has a derivative right of residence</p>	<p>UK, must be provided with a Passport</p>
<p>A current <b>Immigration Status Document</b> containing a photograph issued by the Home Office to the holder <b>with a valid endorsement</b> indicating that the named person may stay in the UK, and is allowed to do the <b>type of work in question</b>, together with an official document giving the person’s permanent <b>National Insurance number</b> and their name issued by a Government agency or a previous employer</p>	<p>UK, must be provided with a Passport</p>
<p>A <b>Certificate of Application issued by the Home Office</b> under regulation 17(3) or 18A (2) of the Immigration (European Economic Area) Regulations 2006, to a family member of a national of a European Economic Area country or Switzerland stating that the holder is permitted to take employment which is less than 6 months old together with a <b>Positive Verification Notice</b> from the <b>Home Office Employer Checking Service</b></p>	<p>UK, less than 6 months old, with additional documents</p>
<p>An <b>Application Registration Card</b> issued by the Home Office stating that the holder is permitted to take the employment in question, together with a <b>Positive Verification Notice</b> from the <b>Home Office Employer Checking Service</b></p>	<p>UK, with additional documents</p>
<p>A <b>Positive Verification Notice</b> issued by the <b>Home Office Employer Checking Service</b> to the employer or prospective employer, which indicates that the named person may stay in the UK and is permitted to do the work in question.</p>	<p>UK</p>

