

Annex 1: Disclosure and Barring Service (DBS) checks, repeat checks and portability

The Protection of Freedoms Act 2012 came into effect on 10 September 2012 with further changes coming into force on a staged basis over the next few years.

The following changes were put in place in September 2012:

- a new definition of “regulated activity” to focus on work which involves close and unsupervised contact with vulnerable groups
- activities and work that have been taken out of the definition of “regulated activity” will still be eligible for Enhanced DBS checks
- the repeal of “controlled activity”
- the repeal of registration and continuous monitoring
- the repeal of the provision of additional information
- the implementation of a minimum age (16) at which someone can apply for a DBS check
- a more rigorous ‘relevancy’ test for when the police release information held locally on an enhanced DBS check

On 1 December 2012, the CRB and ISA merged to form the Disclosure and Barring Service.

The DBS is responsible for administering three types of checks;

- **Standard** – a check on the Police National Computer (NPC) records of convictions, cautions, reprimands, and warnings
- **Enhanced** – a check on the PNC as above plus also other information held by the police that is considered relevant by the police
- **Enhanced with barred list information** – for people working in regulated activity with children. This adds checks of the DBS children’s barred list to the enhanced check.

During 2013, the DBS launched its Update Service. Employees are now able to register once for a DBS check, which is then automatically updated and available for organisations to check.

However, there are aspects of the old system which are not changing, these are:

- employers must make appropriate referrals to the DBS
- employers must not allow someone whom they know has been barred by the DBS to undertake regulated activity
- employers may undertake checks for anyone employed in activities which fall within the pre-September definition of regulated activity, as they remain eligible for enhanced DBS checks, whether or not they fall within the post-September definition of regulated activity (but they will no longer be eligible for barred list checks if they do not fall within the new definition of regulated activity)

Previously there has been widespread misunderstanding about when and how frequently to undertake checks. The following sets out the current position in relation to schools as to when checks need to be in place before an employee can start work.

- CRB checks were strongly recommended for all employees who have regular contact with children if they were employed after March 2002. However, the only requirement for those appointed before this date was that they must have been List 99 checked.
- CRB checks became mandatory for the entire maintained schools' workforce from 12 May 2006 (September 2003 for independent schools). Employees who took up post from this date must have an enhanced CRB disclosure.
- **No further checks are required** for any staff unless the person has a break in service of more than three months. There is no statutory requirement for staff to have routinely updated checks, although some employers may require this as policy. There is also no statutory requirement for staff employed before March 2002 to have retrospective CRB or DBS checks as long as they have been in continuous service. In this context, continuity means no break of service of longer than three months. However, prior to 2002, there was a requirement for all staff who work with children and young people to have to been checked against List 99, and evidence of this should be checked.

An employer can only ask for a barred list check for those staff undertaking regulated activity. It's a criminal offence to ask for a barred list check for any other role.

Under the Education Workforce Council (Main Functions) (Wales) Regulations 2015, registration with the Education Workforce Council is a statutory requirement for every teacher who works in a maintained school or PRU in Wales. The DBS provides EWC with regular updates on barred individuals. Note that some criminal offences do not debar a person registering as a teacher.

Supply staff and visitors employed by an agency

Staff such as educational psychologists, supply teachers, trainee teachers, nurses, sports

who are employed by an agency should be CRB or DBS checked by their employer, for example the supply agency, the university, or local authority.

It is sufficient for schools to seek written confirmation that all appropriate checks, have been carried out for these people (most commonly on appointment) and by whom (most commonly the relevant human resources department). Schools should then confirm the identity of these visitors.

Supply staff who are not employees of an agency

Many of these staff are not employees of a supply agency, therefore, schools cannot assume that supply staff matched with them in this way have been through the necessary vetting procedures. Schools should confirm directly with the individual supply, that the necessary recruitment checks have taken place before staff start work with them.

Part-time staff

Part-time staff may use the same CRB or DBS check for two or more posts as long as they are at a similar level **and** the school has satisfied themselves about their veracity and appropriateness.

Governors/members of PRU management committee

The position relating to governors has changed under the **Protection of Freedoms Act 2012**. As school Governors are no longer undertaking regulated activity, there is no requirement for them to be subject to vetting and barring checks. However, where governors are undertaking some form of regular contact (as defined by the Act); with pupils, they are subject to risk assessment and possible vetting and barring unless adequately supervised.

Moving between schools and local authorities

Since September 2006 supply agencies have been able to pass CRB or DBS checks

between other school supply agencies and between individual schools.

- If an employee has been CRB or DBS checked, **there is no statutory requirement** that another CRB or DBS check is carried out before taking up a job in a different school or even in a different local authority, provided they have continuous service and the check is at the correct level for the new post.
- The same applies to someone who may not have a CRB or DBS check due to being in post before 2002, that is, there is no statutory requirement for further checks to be carried out.
- It is up to the receiving organisation to decide for itself if it wishes to undertake a new check or not. If it decides not, then it should carry out a risk assessment to assess whether the check is at the correct level for the current role, whether it is accurate and whether they trust the previous organisation to have carried out the check efficiently.
- The school or local authority should ask for evidence, from the previous school or local authority, that the check was undertaken. Some schools and local authorities are reluctant to accept transferring staff without requesting a fresh CRB or DBS disclosure certificate because they believe that we would be critical of such arrangements. Inspectors should avoid giving any impression that we consider good practice to request repeat CRB or DBS disclosure certificates routinely whenever a member of staff is recruited directly from another school without a break in service. Schools should be encouraged to risk assess each case individually and be prepared to demonstrate the basis for their decisions.
- Schools / local authorities which fail to secure evidence that paid staff and unsupervised volunteers have undergone the appropriate DBS checks before the staff member begins face to face teaching, should receive a judgment of unsatisfactory. However, a school or local authority has only initiated the checking process but has not received confirmation of suitability they must have carried out a suitable risk assessment and put in place appropriate supervision for the member of staff. This will be reflected in the inspection report.
- It is only volunteers who are supervised who do not need DBS with barred list checks

The regulations above apply to all schools, including pupil referral units. Social care and residential settings are subject to the national minimum standards which require more stringent requirements in respect of safeguarding checks. In such settings, staff **can** take up their posts before DBS clearance has been received, but it must have been applied for and the member of staff awaiting clearance must be supervised when in contact with children and young people.

Initial teacher training

In the case of student teachers on initial teacher education courses, it is the initial

teacher education partnership's responsibility, not the receiving schools, to ensure that appropriate recruitment checks are made. In the event of a delay in receiving disclosures from the DBS, the Welsh Government's guidance gives discretion to allow students to start working in a school subject to a satisfactory check of the DBS' children's' barred list and completion of other normal recruitment procedures.

The partnership should keep its school leaders fully informed of the progress of applications for disclosures, since these leaders will need to maintain closer supervision of students who have not yet received enhanced clearance. Leaders must be satisfied that checks have indeed been done.

The situation is different for student teachers on an employment-based teacher training route. They are employed by the school and should therefore be cleared by the school and in the same way as other directly employed staff.