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## Vetting and Disclosure and Barring Service (DBS) Checks

### Background

From the 1<sup>st</sup> December 2012 the functions of the Independent Safeguarding Authority (ISA), to make barring decisions, and the Criminal Records Bureau (CRB), to provide criminal records disclosures, were taken over by the Disclosure and Barring Service (DBS). This scheme applies in England, Wales and Northern Ireland (although disclosure applications in Northern Ireland are managed by Access NI). A separate scheme applies in Scotland (managed by Disclosure Scotland), so what constitutes regulated activity is different under Scottish and English law. It means that this guidance, and its examples, do not represent the regulations as they apply to Scottish companies or organisations.

### Engaging Staff and Volunteers

It must be clearly understood that a DBS check, in itself, is no guarantee as to the suitability of an individual to work with young or vulnerable people. The placement of an adult in a situation of professional trust with young or vulnerable people should always be subject to a robust engagement process as well as a DBS check if this is appropriate. Depending on the level of responsibility being placed upon the employee or volunteer, a robust engagement process might include some or all of the following elements:

- references
- interview
- induction
- training
- monitoring.

### Regulated Activity

Individuals who engage in regulated activity with young people or vulnerable adults should undergo an enhanced DBS check, with barred list check, as part of their recruitment process. It is the responsibility of the organisation engaging the individual to decide if a particular role falls within the legal definition of regulated

activity. This document aims to help with making that decision. Establishments should be aware that they cannot request an enhanced DBS check with barred list check for anyone who is not in regulated activity, but **may** request an enhanced DBS check without a barred list check.

The full definition of regulated activity is found in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012. For our purposes, an individual can become engaged in regulated activity either through what they do (a defined activity) or where they work (a specified place):

### 1. Defined activities

Defined activities include the following when they are carried out *frequently* or *intensively*:

- a. Any form of teaching, training, instruction, supervision or care of children (see 'regulated activity under supervision' below, for exceptions when the activity is, on a regular basis, subject to the day to day supervision of another person).
- b. Provision of advice or guidance to children relating to their wellbeing.
- c. Driving a vehicle that is being used solely for conveying children and their carers or supervisors.

Defined activities also include the following *even if the activity is carried out only once*:

- d. Health care provided by, or under the direct supervision of a regulated health care professional.
- e. Personal care involving physical assistance (or required prompting with supervision, advice or training) with eating, drinking, washing, dressing, bathing and toileting for reasons of age, illness or disability.

### 2. Work in a specified establishment

- f. Any work carried out *frequently* or *intensively* in a specified establishment, in connection with the purposes of that establishment, that gives a person the opportunity to have contact with children. If such work is not one of the defined activities, and only involves the provision of occasional or temporary services, then this is not regulated activity.

**Specified establishment** This is a specific list involving only those places listed below. Any other establishment (i.e. an Outdoor Education Centre) should apply the threefold test (outlined below in 'How to decide if someone involved in a visit is engaged in regulated activity') to decide if their staff are engaged in regulated activity. Specified establishments are:

- a) An educational institution which is exclusively or mainly for the provision of full-time education to children.
- b) A school falling within section 19(2) or (2B) of the Education Act 1996 (Pupil Referral units etc) not falling in (a) above.
- c) An alternative provision Academy not falling in (a) above.
- d) An establishment which is exclusively or mainly for the provision of nursery education (within the meaning of section 117 of the School Standards and Framework Act 1998 [c.31]).

- e) An institution which is exclusively or mainly for the detention of children.
- f) A children's home (within the meaning of section 1 of the Care Standards Act 2000 [c.14]).
- g) A home provided in pursuance of arrangements under section 82(5) of the Children's Act 1989 [c.41].
- h) A children's centre (within the meaning of section 5A(4) of the Childcare Act 2006)
- i) Relevant childcare premises

**Frequently** means the same person engages in the activity once a week or more.

**Intensively** means the same person engages in the activity on 4 or more days in a 30-day period (or in some cases overnight between 2am and 6am, where there is opportunity for face to face contact).

### Regulated activity under supervision

Teaching, training, instruction, care and supervision of children are not regulated activity if they are, on a regular basis, subject to the day-to-day supervision of another person who is engaging in regulated activity (and therefore appropriately vetted). The day-to-day supervision must be reasonable in all circumstances to protect the children concerned. The Department for Education (DfE) has issued statutory guidance on this. You may need to copy and paste the link into your browser.

<https://www.gov.uk/government/publications/supervision-of-activity-with-children>.

This exemption applies to volunteers whether they are working in a specified establishment or not. It does NOT apply to paid employees working in a specified establishment – a paid employee in a specified establishment is carrying out regulated activity. However, appropriately supervised paid staff, who are **not** working in a specified establishment, can be covered under this exemption (the DfE guidance cites a paid youth club worker as an example – a youth club not being a specified establishment).

### How to decide if someone involved in a visit is engaged in regulated activity

Organisations need to answer the following questions to reach a decision on whether they should obtain an enhanced DBS check with barred list check on leaders/helpers involved in a trip or visit:

1. Does the work they will be doing meet the activity definition?
2. Does the 'frequently' or 'intensively' condition apply?
3. Does the statutory guidance on supervision apply?

If the answer to question 1 and 2 is 'yes' then the leaders/helpers will be engaged in regulated activity unless they are appropriately supervised. When answering question 3, it is the organisation's duty to decide what constitutes appropriate

supervision, but they must have regard to the statutory guidance and must take into account the following factors:

- Ages of children, including whether their ages differ widely.
- Number of children with whom the individual is working.
- Whether or not other workers are helping to look after those 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.
- How many workers each supervising worker would supervise.

## Outdoor Learning on the school site

Leaders/helpers involved in outdoor learning on the school site are engaged in work at a specified establishment. Therefore, if their role gives them opportunities to come into contact with children, they are engaged in regulated activity unless they are either:

(a) Appropriately supervised volunteers

or

(b) Doing tasks that do not involve teaching, training, instruction, care for or supervision of children and are providing occasional or temporary services.

For example, a volunteer who is occasionally involved in setting up and taking down a camp on the school site but who is not involved in teaching, training, instruction, care for or supervision of children, would not be in regulated activity.

## Using third party providers

There has perhaps developed over the past few years an expectation that all employees of a third party provider, who may come into contact with children, will be checked for criminal records. Visit leaders should be aware that this is not a reasonable expectation. Under the DBS regime there are clear limits to who can be subjected to which level of checking. As third party providers will not usually be 'specified establishments' then they will only be able to check those staff or volunteers who are involved in one of the defined activities and this may well not involve ancillary staff. Providers should still, of course, have in place a robust recruitment and engagement system for all their staff and volunteers.

## Examples

The following may help to provide context. Please remember that where the activity is deemed to be not regulated activity this means only that a DBS check is not necessary. It does not mean that other reasonable checks for recruiting or engaging staff are not relevant.

1. Several volunteers are involved in supervising a day trip to the seaside. This is the only time they will help work with the children this month.  
*The activity definition applies but the frequently and intensively conditions are not met so this is not regulated activity.*

2. A local bushcraft expert volunteers to work with a group in a school's Forest School area every Wednesday afternoon for the next six weeks to provide some extension activities. The class teacher will always accompany the sessions.  
*The activity definition applies and the frequently condition is met so the head teacher must decide if the class teacher will appropriately supervise the volunteer. As the class teacher is always present it would be perfectly acceptable to decide that this is not regulated activity.*
3. A parent, who holds a first aid qualification, volunteers to assist their child's school with trips during the school day. This is a real help because many of the teachers do not hold first aid awards.  
*The activity definition applies if they will also form part of the supervision team. The frequently condition may be satisfied if they do regular trips. However, the statutory supervision guidance applies, and if the head teacher decides that school staff will appropriately supervise this person then they are not engaging in regulated activity.*
4. The partner of the leader of a school's one-week Austrian ski trip is going as a helper.  
*The activity definition applies, and the intensively condition is met, so the head teacher must decide if the visit leader will appropriately supervise them. As this is a residential visit where helpers could have access to children's bedrooms it would be sensible to decide that this is regulated activity and to obtain a DBS check with barred list check.*
5. A school has a volunteer who helps the year 6 class teacher take a group to the local swimming baths every week.  
*The activity definition applies and the frequently condition is met so the head teacher needs to decide if the teacher will appropriately supervise them. Depending on the layout of changing rooms at the pool, as this activity gives opportunities to be in contact with the children while they are changing, it would be best practice to decide that this is regulated activity and obtain a DBS check with barred list check.*
6. A volunteer helper comes on a day trip to provide 1:1 support for a child with special needs who needs help with eating at lunch.  
*This person is engaged in regulated activity as they are providing personal care. The frequently and intensively test and the statutory supervision guidance are not applicable in the case of personal care.*
7. A school is going on a coach tour of Europe and will use the coach every day during the week's trip. Does the driver need a DBS check?  
*The activity definition applies and the intensively condition is met so this is regulated activity (the statutory supervision guidance does not apply to driving). It is the responsibility of the coach company to check the driver but it would be good practice for the school to confirm this as part of the booking process.*
8. A school occasionally uses parent helpers to transport children to events in their own cars.  
*If the school organises this transport using parent helpers then the activity could be classed as regulated in any one of two ways:*

- a. *If the parent is alone in the car with children then there is arguably an element of supervision, and so this meets the activity definition.*
- b. *Driving a vehicle being used solely to transport young people under an agreement with the school or teacher also meets the activity definition.*

*Therefore the deciding factor is whether or not the same parent transports children 'frequently' or 'intensively'. If they do then this is regulated activity, if they don't then it is not.*

*If parents themselves make arrangements for their children to be taken to a venue or fixture in each other's cars then this is a private arrangement and not a regulated activity no matter how frequently or intensively it is carried out.*

*Clearly vetting and DBS checks are only one issue to consider when arranging to use private cars to transport young people. For more detailed transport advice see the documents on the use of private cars in section 4 and 6 of this guidance.*

## Exchanges and Homestays

When an establishment uses host families to provide young people with accommodation during a visit, they have a duty to take all reasonable steps to ensure that young people are placed in appropriate homes (for further guidance on what should be included in a vetting procedure for host families see the document '*Exchanges and home-stays*' in section 7 of this guidance).

Whether a DBS check should form part of this process is a decision the establishment must make using the same principles outlined above.

The activity of hosting is not carried out in a specified establishment, therefore, simply having access to young people is not sufficient to necessitate a DBS check. The establishment must decide whether the host family is engaged in one of the defined activities on its behalf.

## Three Exchange and Homestay Settings:

### **Hosts providing Bed and Board**

Where host families are simply providing bed and board for young people, who remain under the remote supervision and care of establishment staff, and there is no expectation of '*teaching, training, instruction, supervision or care*', it is not regulated activity. This will apply where the host family is, for example, acting in the same way as an hostel or hotel.

### **Hosts providing 'regulated activity under supervision'**

When host families take on a care or supervision role then this does meet the activity definition and, because the supervision is overnight, it also meets the 'intensively' test. In this case the establishment must decide whether this can be 'regulated activity under supervision' not requiring DBS checks (as previously explained). As the activity takes place overnight, and in the host family's home, then this is unlikely to be the case, but may be possible where families and their homes are well known to the school and staff can make regular visits.

## Hosting as a Private Arrangement

The final decision as to whether a DBS check is necessary, or not, depends on whether the host families are acting on behalf of the school (or a third party provider) or are acting on behalf of the young person's parents in a private arrangement. A decision that the hosting is a private arrangement would be supported by correspondence between the two families - such as a 'pen-friend' relationship between the young people, or a dialogue between parents. A private arrangement of less than 28 days is not a regulated activity. Beyond this time it becomes private fostering and the local Authority should be informed.

### If a regulated activity, who should undergo a DBS check?

When a DBS check is considered necessary the establishment must decide which members of the host family should undergo a DBS check. As stated earlier simply having access to the young people is not the deciding factor but rather which members of the family will be working in a defined activity – i.e. providing supervision or care. The choice is between requesting an enhanced check with barred list check on all host family members providing care or supervision; or requesting an enhanced check with barred list check for one family member and making them responsible for supervising any others.

DBS checks are not possible on overseas families and therefore other methods of vetting host families abroad must be used. Refer to the document 'Exchanges and Home Stays' elsewhere in this guidance for more information.

### 'Disqualification by association'

Under the 'Childcare (Disqualification) Regulations 2009' a person can be prohibited from working in an early or later years child care setting 'by association' i.e. if they live in the same household as someone who is, or would be, disqualified. This applies to nurseries and schools which employ staff to work in:

- early years' provision (school nursery and reception classes ) or
- before school settings (e.g. breakfast clubs) or after school provision for children under age 8

A person so disqualified can apply for a waiver from OFSTED. Establishments are advised to consult their employers or refer to the DfE guidance "Disqualification under the childcare act 2006" available via the link below. You may need to copy and paste it into your browser.

<https://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006>

## Students on a Placement

Students undertaking placements where they may be engaged in regulated activity should have undergone a DBS check initiated by the university or college that they attend. The host organisation should confirm this with the University or College before accepting a placement student.

## Note

This guidance is about 'regulated activity', and when an enhanced DBS check with barred list check is possible. It does not cover standard or enhanced DBS checks for employment positions listed in the Rehabilitation of Offenders Act Exceptions Order and the Police Act Regulations, as these are not considered of relevance here.

