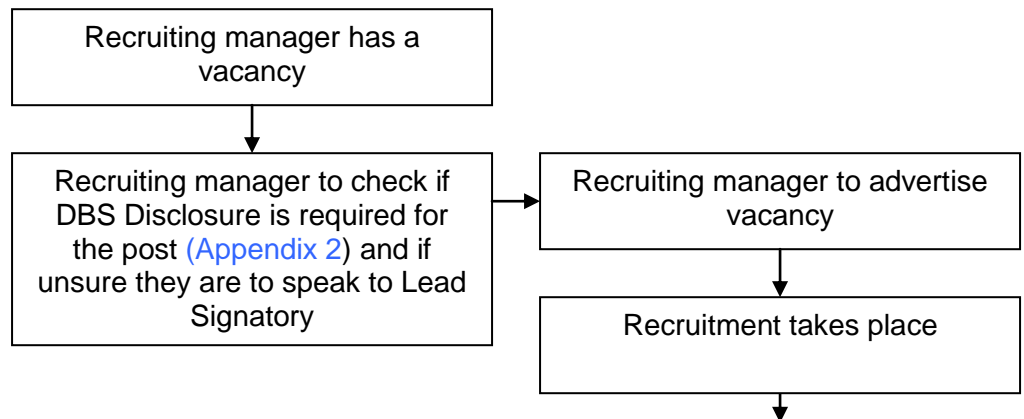
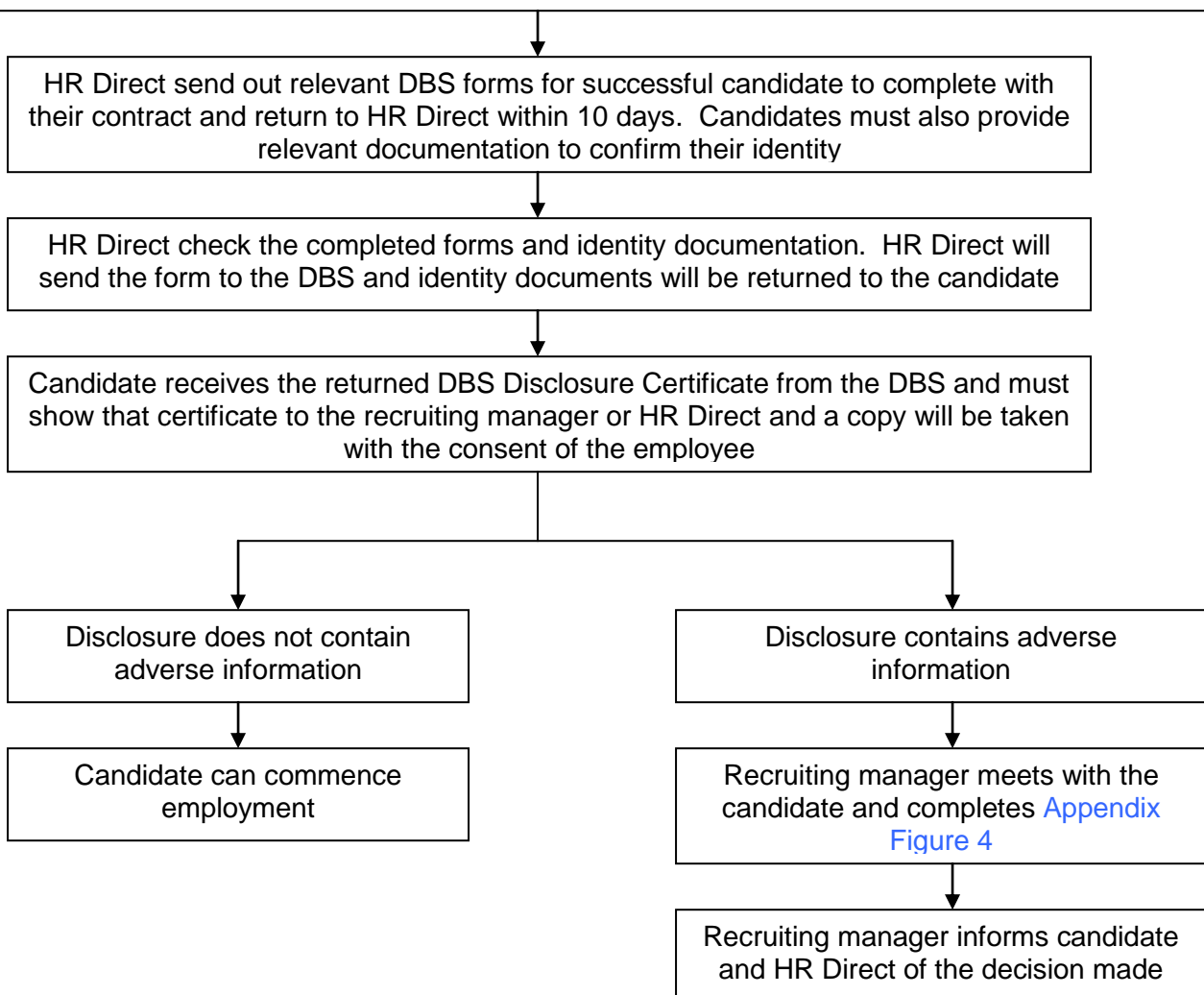


## Flowchart for DBS Process



Recruiting Manager informs HR Direct of successful candidate on the New Appointment Form. Recruiting managers are to agree a start date with the candidate which **must** accommodate the return of the DBS Disclosure certificate. In very exceptional circumstances, with Head of Service / Head Teacher permission and a completed risk assessment (Appendix Figure 3), the employee may be able to commence with a high level of supervision in place. The employee must not be left alone with or permitted sole charge of any child or vulnerable adult.



## **Denbighshire County Council**

### **Policy Document**

#### **Title: Disclosure and Barring Service (DBS) Policy**

### **Policy Statement**

The Council is committed to safeguarding the welfare of those who access our services. The Council has a statutory duty of care towards vulnerable groups under the Safeguarding Vulnerable Groups Act (2006) and the Exceptions order to the Rehabilitation of Offenders Act (1975). This duty must be carried out with regard to relevant legislation, to include: Protection of Freedoms Act (2012), Rehabilitation of Offenders Act (1974), Data protection Act (1998), DBS Code of Practice and Human Rights Act (1998).

This document sets out Denbighshire County Council's policy towards the recruitment and retention of people who wish to work with vulnerable groups who may have a criminal record. The Council is fully committed to recruitment on the basis of an objective and systematic assessment of candidates against job related factors. Through the use of fair employment practices and the adoption of this policy, the Council is keen to ensure that the information relating to criminal records is dealt with in context and with discretion.

This policy will apply to those seeking paid or voluntary opportunities within the Council. In addition, fostering and adoption arrangements, seasonal work, summer placements, graduates, elected members school governors, contractors, agency workers will also come under the provision of the policy.

Within Denbighshire schools the Governors and Head Teachers are responsible for appointments and maintenance of the DBS process within that school. Please substitute the Governing Body for any reference to the Council where the vacancy or position is a schools appointment. Throughout this policy specific provisions to schools are clearly indicated.

Denbighshire County Council is committed to the fair treatment of employees, potential employees and service users. Individuals will not experience discrimination, harassment or bullying or receive less favourable treatment because of their age, disability, gender reassignment, marital or civil partnership status race, pregnancy or maternity religion or belief, sex, sexual orientation or caring responsibilities.

Advice and support will be available from HR Direct.

## **Introduction**

Denbighshire County Council has a duty to ensure the suitability of all those it employs in whatever capacity. Proper recruitment practices form a crucial part in the protection of Council's vulnerable clients.

As part of the recruitment procedures the Council uses Disclosure and Barring Service (DBS) checks where appropriate and subsequently makes a decision regarding the employment of that person within the Council.

## **Aims**

The main purpose of this policy is to ensure the safety and protection of children and vulnerable adults who receive a service from Denbighshire County Council and within the wider community.

This policy complies with the DBS Code of Practice. This is available from HR Direct on request.

## **Application/Scope of Policy**

The policy and procedures apply to all employees of Denbighshire County Council. This policy also applies to staff employed by external bodies (e.g. organisations that we give funding to or procure from) contracted by the Council and sets out the procedure for checking elected members, agency workers, external contractors, volunteers and school governors.

The policy will apply to full-time, part-time, fixed term, volunteers, work experience, internships, graduates, casual and temporary employees, regardless of the hours worked.

It will be the responsibility of the recruiting manager to establish the DBS status of workers engaged through external contractors, including agencies through Matrix and temporary staffing agencies, and be assured that the appropriate level check has been undertaken.

## **Engagement /Participation/Consultation**

This policy has been drafted taking account of changes in legislation and feedback from employees attending Staff Road shows & Breakfast meetings. It has also been consulted and negotiated with Senior Leadership Team, managers, officers responsible for safeguarding within the Council and Trade Unions.

## **Legal & Other References**

Rehabilitation of Offenders Act 1974  
Exceptions Order 1975  
Police Act 1997  
Data Protection Act 1998

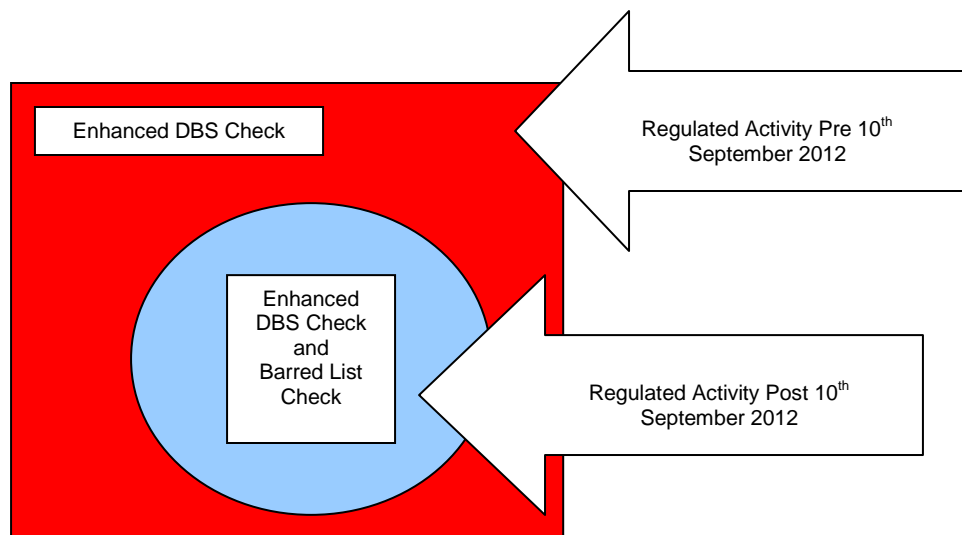
Protection of Children Act 1999  
 Care Standards Act 2000  
 Freedom of Information Act 2000  
 Human Rights Act 1998  
 Safeguarding Vulnerable Groups Act 2006  
 Protection of Freedoms Act 2012  
 DBS Code of Practice and Human Rights Act 1998

## Policy Details

### Types of DBS Disclosure and Barred Checklists

The CRB and ISA have merged to format the DBS. There has been a change in terminology:

Previous Term	New Term
Criminal Records Bureau (CRB) Independent Safeguarding Authority (ISA)	Disclosure & Barring Service (DBS)
Enhanced CRB Check	Enhanced DBS Check
Standard CRB Check	Standard DBS Check
Enhanced CRB Check with Barred List Check	Enhanced Check for Regulated Activity
ISA Adult First	DBS Adult First
Vulnerable Adults	Vulnerable Groups



Red Square - represents the posts that fall within the old definition of Regulated Activity. From 10<sup>th</sup> September 2012, employees in posts that fall within this area are still entitled to an **Enhanced DBS Check**.

Blue Circle – represents the new definition of Regulated Activity. Fewer posts will fall into this definition. From 10<sup>th</sup> September 2012, employees that fall within this area are entitled to an **Enhanced Check for Regulated Activity**.

[Appendix Figure 1](#) will establish whether a position becomes under the Post 10<sup>th</sup> September 2012 definition of a Regulated Activity and is therefore entitled to an Enhanced Check for Regulated Activity. If the position does not come under this definition then refer to [Appendix Figure 2](#) to establish if the position comes under the pre 10<sup>th</sup> September definition and is therefore entitled to an **Enhanced DBS Check**. If the post does not come under either definition then it is not entitled to a DBS Check.

### **Barred List**

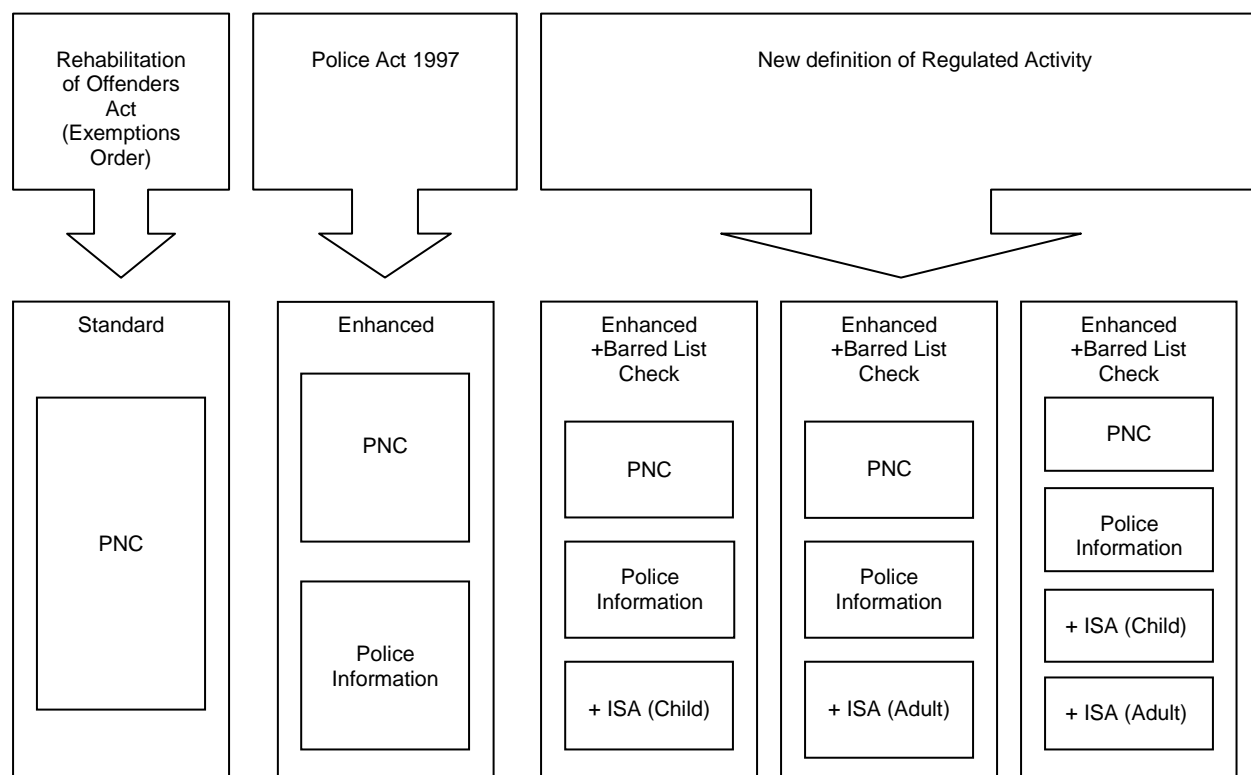
It is an offence for individuals who are on the Barred list to apply for posts in Regulated Activity (Post 10<sup>th</sup> September 2012 definition). Previously it was illegal for them to apply for the posts outlined above. This means that individuals on the barred list can now apply for posts that fall under the old definition of Regulated Activity (i.e. Regulated Activity pre 10<sup>th</sup> September 2012) as long as they do not fall under the new definition of Regulated Activity (Post 10<sup>th</sup> September 2012).

The Enhanced DBS may not state if a person is on the Barred list but there will be details of criminal convictions that would indicate that someone may be on the barred list. The manager would then be responsible for investigating this and completing [Appendix Figure 4 - Cause for Concern Risk Assessment Form](#).

### **Minimum Age**

The minimum age that someone can have a DBS Check is now 16 years old. The Council signatories will be unable to countersign any documents relating to anyone under the age of 16.

## Types of Check Available and Relevant Legislation



## Responsibilities

### Lead Counter Signatory is responsible for:

- Acting for the principal point of contact for the DBS
- Ensuring that the Council's practices and counter signatories comply with the requirements and guidance in line with the DBS Code of Practice

### Counter Signatory is responsible for:

- Ensuring that the correct level of disclosure is requested.
- Ensuring that the appropriate checks have been carried out for periods of non-UK residence
- Counter signing disclosure forms
- Checking Disclosure certificates and updating Trent with the required information
- Controlling the use, access and security of disclosure certificates
- Satisfying themselves of the identity of the person applying for a disclosure
- Satisfying themselves that the evidence presented is genuine and in line with DBS requirements

## Recruiting Manager is responsible for:

- Checking an applicants Disclosure certificate, making a copy and sending this copy to HR Direct.
- Checking all private / external contractors DBS certificates before they commence on site.
- Arranging a suitable start date for the new employee in line with the return of the DBS check. In exceptional circumstances, where this is not possible, then a risk assessment must be completed by the line manager which requires the Head of Service / Head Teacher authorisation.
- Checking the DBS website to monitor the progress of DBS certificates. If the DBS website states that the certificate has been printed then the manager must request to see a copy before they commence employment.

## Disclosure applicants are responsible for:

- Providing the necessary evidence for identity checks in a timely manner and in person (when applying for a DBS Check)
- Disclosing all of the necessary information to enable an Enhanced DBS disclosure application to be made in a timely manner (when applying for a DBS Check)
- Disclosure of all information that could be relevant to the DBS throughout the duration of their employment/work for the Council

## Principles

The Council requires a new and up to date DBS disclosure certificate at the point of engagement.

**Standard checks** – To be eligible for a standard level DBS check the position **must** be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975. Please check eligibility list on the following website:

<https://www.gov.uk/government/publications/dbs-check-eligible-positions-guidance>

**Enhanced checks** – To be eligible for an enhanced level DBS check, the position **must** be included in both the ROA Exceptions Order **and** in Police Act Regulations.

**Enhanced checks with children's and/or adults' barred list check(s)** – To be eligible to request a check of the children's or adults' barred lists, the position must meet the new definition of regulated activity.

The Council considers that all of its posts where employees have access to children and/or vulnerable adults fall into one or more of the categories under the Rehabilitation of Offenders Act 1974 Exceptions Orders 1975 and therefore satisfies the first test for eligibility for a disclosure application at enhanced level, which includes information on spent convictions. The individual must declare all information regarding previous criminal convictions, cautions, reprimands, warnings and bindovers, including those

which are 'spent' – all must be declared. The Council is therefore entitled to ask about spent convictions ([see appendix figure 5](#)).

For all posts that require a Disclosure Certificate, the Council requires each post holder to be re-checked every four years. However In accordance with the Care Standards Inspectorate for Wales some roles may require a three yearly DBS Check in order to meet their registration requirements. All school Governors will be checked on appointment.

If a post requires an Enhanced DBS Check or Enhanced Check for Regulated Activity, the Council reserves the right to ask existing members of staff in relevant positions to be re-checked. The same process will apply if an individual's actions or activities give 'cause for concern'.

The Council complies fully with the DBS Code of Practice and will not discriminate unfairly against any subject of a disclosure certificate following information received.

Information regarding the recruitment and employment of ex-offenders will be made available to all applicants who are required to undertake a Disclosure Application during the recruitment process.

As an organisation using the Disclosure and Barring Service (DBS) to help assess the suitability of applicants for positions of trust, Denbighshire County Council complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosure information. The Council also complies fully with its obligations under the Data Protection Act and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information ([Appendix Figure 6](#)).

The Council will not accept an Enhanced DBS Check or Enhanced Check for Regulated Activity from any previous employer as the disclosure is technically out of date at the time of issue.

However if the individual has registered for the update service and gives the Council permission then the Council will make use of that.

There may be occasions where due to legislation changes, occupational groups may become subject to regulation for the first time and employees will be expected to comply. Failure to comply may result in disciplinary action being taken.

## **Procedure**

### **Recruitment**

All recruitment will be in accordance with the Council's Recruitment and Selection Procedure.



## **DBS Requirements for a New Post**

Recruiting managers must determine if the post requires an Enhanced DBS check or an Enhanced Check for Regulated Activity. Standard DBS checks are only required for a small number of professions /specific posts which are listed within the eligibility of posts on the following website: <https://www.gov.uk/government/publications/dbs-check-eligible-positions-guidance>

The recruiting manager will need to speak to the DBS Lead Officer and present their rationale in order to establish whether an Enhanced DBS Check is required for the post. The DBS Lead officer may refer the decision to the DBS for a final decision in order to ensure that the Council are not undertaking any illegal Enhanced DBS checks.

Recruiting managers are to refer to [Appendix Figure 1](#) in order to establish if an Enhanced DBS check is required for the post.

The recruiting manager will need to ensure that job descriptions clearly state the need for an Enhanced DBS disclosure if appropriate. For further information and guidance please contact the DBS Lead Signatory in HR Direct.

Job adverts are also to state that the successful applicant will be subject to an Enhanced DBS Disclosure where appropriate. Information regarding the DBS Code of Practice will be provided by HR Direct, if required.

## **DBS – Exempt Information**

For anyone applying for a post which involves working with children and/or vulnerable adults, the Council has a right to ask the individual to reveal their full details of both spent and unspent convictions because of the nature of work they will be undertaking. The Council is asking an 'exempted question' meaning that the position is exempt from the Rehabilitation of Offenders Act 1974 and all such details must be revealed.

The applicant will be required to disclose the detail of all convictions on record (including 'spent' convictions - i.e. those that happened some time ago and normally no longer need to be revealed as specified in the Rehabilitation of Offenders Act 1974), plus details of any convictions, cautions, bindovers, reprimands or warnings. Enhanced DBS Disclosures may reveal non-conviction information from local police records if the police 'reasonably believe' that the information is relevant to the post in question.

## **Offers of Employment**

Enhanced DBS disclosures will only be requested for the successful candidate. Recruiting managers are to make it clear that the successful candidate's offer of employment is subject to the receipt of a satisfactory Enhanced DBS Check within a reasonable timescale. This is also made clear in the contract of employment.

The Council will not accept an Enhanced DBS Check or Enhanced Check for Regulated Activity from any previous employer.

## **Commencement in Post**

Where Enhanced DBS checks are an essential requirement for posts, the checks must be sought as soon as an employment offer has been accepted, with the aim of receiving them before the individual commences employment. Where possible, the start date for individuals to commence their employment with the Council should be set to accommodate the return and clearance of the Enhanced DBS check. A Head of Service / Headteacher must make the decision as to whether a person can commence employment before the Enhanced DBS Check has been returned and would need to complete a Risk Assessment, [Appendix Figure 3](#). HR would advise that an employee should not start before the Enhanced DBS Check has been returned.

In very exceptional circumstances, when it is not possible to delay the appointment, or there is a delay in the return of the Enhanced DBS check, it is the responsibility of the line manager to request approval from the relevant Head of Service / Head Teacher to let the person start without an Enhanced DBS Check and to ensure that appropriate supervision arrangements and / or adjustment to the individual's duties are in place until a satisfactory Enhanced DBS Check is received. In particular, members of staff must not be permitted sole charge of children or vulnerable adults until a satisfactory Enhanced DBS Check is received in line with a completed risk assessment. Please see [Appendix Figure 3](#).

Where the individual is permitted to work whilst awaiting the Enhanced DBS disclosure results, the line manager is responsible for implementing and explaining supervisory measures to all members of staff, including the person concerned and reviewing the arrangement regularly in line with the risk assessment that has been carried out.

If an individual has undertaken an Enhanced DBS Check for their current role within the Council and they move to another position within the Council, the enhanced check will be acceptable as long as there is not a significant increase in the contact or responsibility for children and/or vulnerable adults and a risk assessment has been undertaken. Please see [Appendix Figure 3](#).

If the person does not take up the appointment for any reason then they will be required to reimburse the Council for the full cost of the DBS Check.

## **Failure to return DBS forms**

Repeated failure to return the DBS forms within a specified time will result in termination of employment. The member of staff will be given 10 working days to complete and return the forms. If the forms have not been received within those 10 working days, their employment may be terminated /or offer of employment may be withdrawn.

A DBS disclosure does not in any way eliminate the need for sound recruitment practices, such as a thorough selection process appropriate to the level of the post, checking of identification, qualifications, taking up and verifying references and any gaps in employment.

## **Verification documents**

DBS Disclosure Applications must always include verification of the identity of the applicant as per DBS guidelines. Original documents are required and the appropriate person should verify that the originals have been seen.

Please contact HR Direct for further information or go to DBS website – <https://www.gov.uk/government/organisations/disclosure-and-barring-service/about>

## **What to do if a criminal record is revealed on a Disclosure**

Past convictions will not necessarily be a bar to obtaining a position. However, the failure to disclose such convictions could, be seen as a deliberate attempt to gain employment by deception, and therefore may result in the withdrawal of any offer of employment.

If the applicant has past convictions and discloses them, consideration will be given to the nature of the offence stated and its relevance to the post applied for. The recruiting manager together with the Lead DBS Signatory from HR Direct (if required) will be required to interview the person and complete the 'Cause for Concern Risk Assessment' ([Appendix Figure 4](#)) and assess the risk against set criteria.

For School employees, all decisions as to whether this person can remain in employment are to be made by the Head Teacher and the Chair of Governors and the completed interview form forwarded through to the Head of Education for final approval. Any final decisions in relation to Head Teacher, Governors or Chair of Governors will be made by the Head of Service for Education. All other non schools staff will require the Head of Service, Director or Chief Executive's approval to remain in employment.

It is offence for a barred person to work, apply to work or offer to work in Regulated Activity (post 10<sup>th</sup> September 2012) with a group they are barred from working with. Candidates who are on the Barred list will not be employed in Regulated Activity by the Council.

The Council will notify the DBS if a candidate who is on the barred list makes an attempt to apply for barred work within the Council.

## **Employees with an Adverse Disclosure**

Existing employees who have never been previously checked or their post requires a re-check and subsequently have an adverse disclosure result, the Lead DBS Signatory will refer to [Appendix Figure 4](#) and complete the 'Cause for Concern Risk Assessment' in conjunction with the Head of Service / Head Teacher. It may be appropriate to move the employee in question to a department where they have no access to children and/or vulnerable adults, information, property, data or resources pending the outcome of a full investigation. If this cannot be accommodated then the employee may need to be suspended on full pay pending the outcome of the disciplinary investigation.

When completing the 'Cause for Concern Risk Assessment' it will be considered whether the conviction is relevant to the post. If the results of the Disclosure are considered of a serious nature, the options may include:

- Termination of the employment
- Redeployment – depending on the availability of a suitable vacancy
- The introduction of safeguards

A full appraisal of the situation, including the risks that may be involved and the availability of alternative employment options must be carried out before the decision to dismiss is considered. Any decision to dismiss must be carried out in accordance with the disciplinary policy.

If the disclosure results do not warrant any further action then the employee must be informed of this in writing.

### **Changes to a DBS certificate during the course of employment/work within the Council**

If a post requires an Enhanced DBS Check or Enhanced Check for Regulated Activity, the following applies:

- The Council reserves the right to ask existing members of staff in relevant positions to be re-checked.
- The Council reserves the right to ask existing members of staff to be re-checked if an individual's actions or activities give 'cause for concern'.
- Individuals must notify the Lead Signatory if there are any changes and/or information (to include a new conviction, reprimand, caution or warning) which could be relevant to the DBS throughout their employment or work within the Council.

### **Volunteers**

Checks on volunteers are free; a volunteer is defined as:

“a volunteer is person who is engaged in any activity which involves spending time, unpaid (except for travelling and other approved out-of-pocket expenses), doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives.”

Any volunteer will need an Enhanced DBS Disclosure if the role meets the requirements for an Enhanced DBS Check. If the role is classed as a Regulated Activity (post 10<sup>th</sup> September 2012) then this will require an Enhanced Check for Regulated Activity.

Examples of volunteer work could include an intern, work experience person or a classroom helper or someone who accompanies children on school trips or assists a vulnerable adult with leisure activities.

Under no circumstances must a volunteer who has not obtained a DBS disclosure because one is not required due to infrequent contact be left unsupervised with children and/or vulnerable adults.

## **Agency Workers**

For the purposes of this policy this section refers to those staff employed through Matrix or temporary staff agencies including those contracted to provide care on behalf of Social Services. The agency is legally the employer of any agency worker and the responsibility to obtain the required DBS Checks lies with them as the employer. The agency is also responsible for the costs of obtaining any required DBS checks.

To ensure the safety and protection of children and vulnerable adults, the Council will only employ agency workers who have been subject to the same checks as those which would be undertaken for recruitment to the Council.

Recruiting managers are to ensure that the agency workers that they use are to have an Enhanced DBS disclosure before they can consider using them for any form of work within the Council.

A copy of the agency workers disclosure along with evidence of identity to the same standard should be requested by the recruiting manager for verification. With the consent of the agency worker, the manager must keep a copy of the DBS certificate and a copy of their proof of identity with a record of the date received.

If the Recruitment/Temping agency wishes to recommend an individual with a criminal record to work with children or vulnerable groups, the issues must be discussed with the recruiting manager and the same criteria for decision making will apply as to those which would be undertaken for internal employment.

Agencies contracted by Social Services to provide care would normally be subject to the regulations of the Care Standards Act and be regulated and inspected by the Care Standards Inspectorate for Wales. As such they are required to have DBS checks on staff. Any agency providing a form of care that is not regulated will be required to provide evidence of Enhanced DBS checks on staff for the recruiting manager.

The level of disclosure for agency workers should be equivalent to the level of disclosure that would be applied to an internal post of the same nature.

## **Members (Councillors) of DCC.**

The following members will be required to complete a DBS check:

- A member of the Cabinet
- All members of Scrutiny committees
- A member of the Fostering Panel
- A member of the Adoption Panel
- A member of the Local Children's Safeguarding Board

DBS checks are to be carried out on eligible members following county council elections, and on the relevant members following by-elections and any change in the composition of the Cabinet, committees, panels etc.

That councillors who have not been DBS checked are not eligible to hold any of the above positions or take part in any of the designated activities, noting that a councillor will not be subject to any restrictions on his or her representative role on behalf of vulnerable groups.

We will require an Enhanced DBS Check for any new member of the above committees during the first three months of their term in office.

It will be made clear when the initial notification of elections is posted and in the information packs that individuals who are elected to serve on DCC will be subject to an Enhanced DBS check.

Currently there are certain disqualifications for elections, of which the main ones are:

- having been sentenced to a term of imprisonment (whether suspended or not) of not less than 3 months, without the option of a fine during the five years preceding the elections, and
- being disqualified under any enactment relating to corrupt or illegal practices.

The Chief Executive and Monitoring Officer (Head of Legal and Democratic Services) can intervene and influence Members involvement on all committees and the responsibilities that they discharge. If disclosure or other information reveals the need to adjust a member's involvement or responsibilities, the Chief Executive and Monitoring Officer will be notified by HR Direct and agree the adjustments with the member concerned.

### **Schools Governors**

Welsh Assembly Government confirms that current legislation does not require pre-appointment checks for newly appointed, re-appointed, newly elected or re-elected governors, however, Denbighshire County Council requires all School Governors to undergo an Enhanced DBS Check.

We will require an Enhanced DBS Check for each new governor during the first three months of their term in office. Only governors who have been satisfactorily checked will carry out certain duties within areas used by children during school time hours.

If a criminal record is disclosed on the DBS Disclosure, any final decisions as to whether a Governor / Chair of Governors can remain in that role will be made by the Corporate Director for Learning and Communities.

## **Private Contractors – including ‘Occasional Contractors’**

It is ultimately the responsibility of the Head Teacher or Manager to ensure that all contractors and visitors to the site either have an appropriate DBS Disclosure or have undertaken an appropriate risk assessment ([Appendix Figure 3](#)) to ensure that they can work on site. The same rule will apply in the later circumstance, whereby the Head of Service will need to give permission with regards to the

(For those employed to provide care through contract to Social Services see Agency Workers.)

The organisation providing the contractor is legally the employer of any contractors and the responsibility to obtain the relevant DBS Check or Enhanced Check for Regulated Activity is theirs. An external contractor will include organisations that the Council give funding to, or procure from (e.g. Scala). Examples of such contracts include provision of transport to children and vulnerable adults, catering, cleaning or trade instructors working with children and vulnerable adults.

The risk assessment of contracts with contractors who provide building works, maintenance, or engineering works must include consideration of the protection of children and vulnerable adults.

Where the contractor is to work in a school during term time the first principle is to arrange for the work to be carried out without regular contact with children. If this is not possible and the workers employed through the contract are likely to come into unsupervised contact with children, the contract officer must require the contractor to provide the names and details of the employees and sub contractors so that List 99 can be checked by HR Direct to exclude anyone barred from working with children.

In the case of such contracts in the homes of vulnerable adults where there will be no supervision of the contractor, the contract officer must undertake spot checks. Where there is to be ‘Regular’ ([Appendix Figure 2](#)) unsupervised work in the person’s home, the contract officer must require the contractor to provide names and details of workers and sub contractors so that the POVA list can be checked to exclude anyone who is a potential risk to vulnerable adults.

## **Overseas Recruitment**

Overseas staff should be checked in the same way as for all other staff. The Council will need to carry out the required police checks in line with that country’s justice system and UK requirements.

Where DBS checks are an essential requirement for posts, the checks must be sought as soon as an employment offer has been accepted, with the aim of receiving them before the individual commences employment.

Candidates who have worked or been resident overseas for longer than three months within the previous five years, including UK Citizens who have worked or lived overseas, require the ‘Statement of Good Conduct’. This is also known as a ‘Certificate of Good

Standing'. The original certificate must be seen by HR Direct before the successful candidate commences employment. If the candidate does not have a 'Certificate of Good Standing,' the individual is responsible for the costs involved in obtaining it, together with any translation that is necessary and any cost incurred whilst doing so.

The Home Office are only able to supply information relating to the period the applicant has been resident in this country.

References will need to cover the periods of employment/educational periods abroad. Referees will be asked to provide any information on previous convictions and the appropriate foreign embassy will be contacted for any details on convictions in that country.

Undertaking these relevant checks will extend the pre-employment checking process.

### **Gender Recognition Certificates**

The Gender Recognition Act 2004 allows transsexual people who have undergone gender reassignment to apply for a gender recognition certificate. When a full gender recognition certificate has been issued, the person is legally considered to be of the acquired gender.

If the person is required to undergo a DBS check as part of the recruitment process they must disclose any previous names and/or gender to the DBS who have established a special application procedure and dedicated contact officer to maintain confidentiality (email: [sensitive@dbs.gsi.gov.uk](mailto:sensitive@dbs.gsi.gov.uk) or telephone: 0151 6761452).

Gender confidentiality will be maintained where the individual has no criminal convictions and where there is no other information held by any Police Authority, as a clear disclosure certificate is the ultimate result. However, if they did have convictions under their previous gender that were considered relevant to the position, then the individual's gender change would become evident through the provision of conviction information on the DBS disclosure certificate showing both gender names.

### **Placements**

For teacher and social worker placements, the individual is required to show their line manager /Head teacher their original DBS Disclosure certificate prior to them starting their placement. If the Disclosure shows that the individual has a conviction / caution / warning – then the normal interview procedure should be undertaken as detailed above and a decision made about their suitability for the placement ([Appendix Figure 4](#)).

Placements must not commence until the original DBS certificate has been verified by the manager / Head teacher.



## **Taxi Drivers**

All taxi and private hire vehicle drivers must receive an Enhanced DBS Check. Enabling licensing authorities can also check whether any applicant for a taxi license is barred from working with children or vulnerable adults.

## **General**

### **Delivery of goods to Council establishments**

Schools and other establishments will look at improving the control of deliveries through the use of restricted areas, deliveries by arranged appointment only, time limited movements (e.g. not able to cross playground when children using it), sign in and out procedures and escorting through areas where delivery drivers may have direct access to children or vulnerable adults.

### **Watchful culture**

Even the most careful selection process cannot identify all those who pose a risk to children and vulnerable adults. Therefore, managers and employees should always be alert to untoward behaviour. The emphasis should be on the creation of a culture which gives the people we work with the confidence and mechanisms to raise concern.

# Supporting Documents

## Appendices

### Appendix Figure 1

#### POSTS REQUIRING AN ENHANCED DBS CHECK

(PRE SEPTEMBER 2012)

**Note: All of these posts are still entitled to an enhanced DBS check but may not be entitled to a barred list check. Only posts which fall under the parameters of Regulated Activity Post 10<sup>th</sup> September 2012 are entitled to a Barred List Check (See Appendix 2)**

The enhanced DBS check searches the applicant's details against criminal records and other sources, including the Police National Computer. The check may disclose convictions, cautions, reprimands and warnings. The applicant and the employer will see the results of the search. The DBS check will either confirm that the applicant doesn't have a criminal record, or it will disclose any relevant convictions, cautions, reprimands, warnings and, if applicable, whether the applicant has been barred from working with children and/or vulnerable adults.

The police can also include non-conviction information, for example, fixed penalties, that may be relevant. An enhanced DBS check uses a range of different information sources, including the records of:

- the Police National Computer (PNC) and other data sources
- the Independent Safeguarding Authority

The Council will obtain an enhanced CRB check for every employee or volunteer who is involved in regulated activity (pre 10<sup>th</sup> September 2012 definition) working with children or vulnerable adults. The same principle is also applied to agency workers and contractors/sub-contractors.

An activity is classed as 'regulated' and therefore eligible for an enhanced CRB check if one of the three following criteria is met:

1. The work is of a Specified Nature – e.g. teaching, training, supervision, advice, treatment, transport	and	Frequently, intensively and/or overnight – once a week for most services, but once a month or more for health and social care services providing personal care, takes place on four days in one month or more, overnight between 2am-6am.		
or				
2. The work is in a Specified Place – e.g. schools, pupil referral units, childcare premises, residential children’s care homes, children’s centres, adult care homes	and	Frequently, intensively and/or overnight – once a week for most services, but once a month or more for health and social care services providing personal care, takes place on four days in one month or more, overnight between 2am-6am	and	Gives that person the opportunity, in consequence of anything he is permitted or required to do in connection with the activity, to have contact with children or vulnerable adults.
or				
3. The work is in a Specified Role – including fostering and adoption or a ‘defined office holders’ such as Director of Children and Family Services, Member of a Local Safeguarding Children’s Board, Members of Fostering and Adoption Panels, Member of any committee of a Local Authority that discharges any of that Authority’s education or social services function.				

No distinction is made between paid and voluntary work.

There is a fine line of distinction with some posts across the Council. A library is not a listed establishment in the Safeguarding Vulnerable Groups Act 2006 and therefore all roles must be assessed on the nature of the duties the individual will carry out, i.e. training, teaching, instructing and supervising children or vulnerable adults. Examples include:

- There is a story time session for the general public. Some people may bring their children along and the children may join in. This is classed as incidental contact with children and the assistant is therefore not eligible for a CRB check.
- There is a story time session for children aged 18 and under. The assistant meets the criteria and is eligible for a CRB check even if the children in the club may differ from week to week.

In summary, activities in a library which are open to the general public are not covered by any exceptions in legislation and, therefore, unless a class or event has been organised wholly or mainly for children or vulnerable adults on a regular basis, the instructor/facilitator would not meet the criteria for a CRB check.

Direct supervisors of staff who require an enhanced CRB check and Barred List check, will also require an enhanced CRB and Barred List check themselves.

Certain posts within the Council are not eligible for a CRB check, for example, if an employee has access to sensitive or confidential information such as home addresses, financial details, databases of vulnerable clients or medical information, application for a disclosure does not currently fall within legislation; this is because the employee has no direct contact with children and/or vulnerable adults.

### **What is meant by working regularly?**

The key test is 'frequent' or 'intensive' contact which was clarified in December 2009 by Sir Roger Singleton and the Secretary of State for Children, Schools and Families as:

“The frequent contact test should be met if the work with children takes place once a week or more. The intensive contact test should be met if the work takes place on four days in one month or more or overnight. Individuals who go into different schools or similar settings to work with different groups of children should not be required to register unless their contact with the same children is frequent or intensive.”

## Appendix Figure 2

### **POSTS REQUIRING AN ENHANCED CHECK FOR REGULATED ACTIVITY**

#### **(POST 10<sup>th</sup> SEPTEMBER 2012 DEFINITION)**

The full, legal definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, as amended (in particular, by the Protection of Freedoms Act 2012). Regulated activity still excludes family arrangements, and personal, non-commercial arrangements.

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#### **Regulated Activity (Children) - New Definition of Regulated Activity - Children (post 10<sup>th</sup> September 2012)**

The new definition of regulated activity relating to children comprises only:

1. Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children.
2. Work for a limited range of establishments ('specified places' – see list below), with opportunity for contact, (but not work by supervised volunteers).

Work under 1 or 2 above is regulated activity only if done regularly. Regular means carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period (or in some cases, overnight). Statutory guidance about supervision of activity – currently out for consultation.

- Relevant personal care, for example washing or dressing; or health care by or supervised by a professional, even if done once;
- Registered childminding; and foster-carers;

Regulated activity still excludes:

- Family arrangements;
- Personal, non-commercial arrangements.

#### **Definition of Supervision**

Supervision must be:

- Regular.

- Day to day.
- Reasonable in all the circumstances for the purpose of protecting the children concerned.
- Carried out by someone who is engaging in regulated activity relating to children.

### **Specified Places**

- Schools and colleges wholly or mainly for under 18 year olds (all or mainly full-time, for children).
- Pupil referral units (also known as Short Stay Schools) not falling within the above.
- Nursery schools.
- Institutions for the detention of children.
- Children's homes.
- Children's centres in Wales
- Childcare premises (including nurseries).

### No longer in regulated activity - children

### **Activities**

- Activity supervised at reasonable level.
- Health care not by (or directed or supervised by) a health care professional.
- Legal advice.
- “Treatment/therapy” (instead “health care”).

### **Establishments**

- Occasional or temporary services, e.g. maintenance (not teaching etc.).
- Volunteers supervised at reasonable level.

<b>Part 1: Regulated Activity in relation to children activities</b>
<p>The activities in the left-hand column are regulated activity in relation to children, subject to:</p> <ul style="list-style-type: none"> <li>▪ exceptions in the right-hand column;</li> <li>▪ different provisions for “establishments” (specified places) in Part 2 below.</li> </ul> <p>Do not read the left-hand column in isolation from the right-hand column or from Part 2.</p> <p>In the right-hand column:</p> <ul style="list-style-type: none"> <li>▪ “new” exceptions are those in the 2012 Act;</li> <li>▪ “existing” exceptions are already in the 2006 Act as amended before the 2012 Act, or in secondary legislation under it.</li> </ul> <p>Changes to Legislation: There are outstanding changes not yet made to the</p>

Safeguarding Vulnerable Groups Act 2006, but which are in force.	
Activity	Exceptions – not Regulated Activity
All of regulated activity.	Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity in relation to children. This is the “peer exemption”.
In para 2(1) of Schedule 4: of the Safeguarding Vulnerable Groups Act 2006	
<p>(a) Teaching, training or instruction of children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period, or overnight*.</p> <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised.</p> <p>*Sources:</p> <ul style="list-style-type: none"> <li>- once a week: guidance, March 2010, Annex B, page 70 para B.12;</li> <li>- four or more days/ overnight: Schedule 4, para 10(1) as amended.</li> </ul>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. Para 2(3A).</li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity relating to a child in the course of his employment, not by a person for whom arrangements exist principally for that purpose.</li> <li>▪ Activity merely incidental to activity with adults.</li> </ul>

<p>(b) Care or supervision of children if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight.</p> <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised.</p>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. Para 2(3B)(b).</li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.</li> <li>▪ Activity merely incidental to activity with adults.</li> </ul>
<p>Particular types of care within (b) above, which apply to any child, even if done only once: (i) to (ii) below.</p>	
<p>(i) Relevant personal care. Para 1(1B):</p> <p>(a) physical help in connection with eating or drinking, for reasons of illness or disability;</p> <p>(b) physical help for reasons of age, illness, or disability, in connection with:</p> <ul style="list-style-type: none"> <li>▪ toileting (including re menstruation);</li> <li>▪ (ii-iii) washing, bathing, or dressing;</li> </ul> <p>(c)-(d) prompting with supervision, in relation to (a)-(b), where the child is otherwise unable to decide;</p> <p>(e)-(f) other training or advice in relation to (a)-(b).</p>	



<p>(ii) Health care. Para 1 (1C):</p> <p>All forms of health care relating to physical or mental health including palliative care and procedures similar to medical or surgical care.</p>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Health care not by, or directed or supervised by, a health care professional*. Para 2(3B)(a).</li> <li>▪ *Defined by reference to regulatory bodies. Para 1(1C).</li> </ul>
<p>(c) Advice or guidance provided wholly or mainly for children relating to their physical, emotional or educational well-being if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight.</p>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Legal advice. Para 2(3C);</li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.</li> </ul>
<p>(a), (b) &amp; (c): Definition of “overnight”:</p> <p>In relation to teaching, training or instruction; care or supervision; or advice or guidance, it is also regulated activity if carried out (even once) at any time between 2am and 6am and with an opportunity for face-to-face contact with children. Schedule4, Para 10(2).</p>	
<p>Former category (d), treatment or therapy, is now replaced by “health care” provisions.</p>	
<p>(e) Moderating a public electronic interactive communication service likely to be used wholly or mainly by children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period.</p>	<p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity by a person who does not have access to the content of the matter, or contact with users.</li> </ul>

<p>(f) Driving a vehicle being used only for conveying children and carers or supervisors under arrangements as prescribed*, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period.</p> <p>*Prescribed by SI 2009-1548</p>	
<p>In para 1 of schedule 4:</p>	
<p>(3) Early years or later years childminding* with a requirement to register, or voluntary registration, under Childcare Act 2006.</p> <p>*That is: on domestic premises, for reward; as opposed to “childcare premises”, part 2 below.</p>	
<p>(5) Fostering** a child.</p> <p>**Defined at section 53.</p>	<p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Care arranged by family members and not for reward is not regulated activity. Section 53(8).</li> <li>▪ Local Authority can foster child with barred person who is, or lives with, a relative of the child. <i>SI 2009-1797, Art 3(2).</i></li> </ul>
<ul style="list-style-type: none"> <li>• (14) Day to day management on a regular basis of a person providing a regulated activity in Schedule 4, paragraphs 1(1) or (2) – that is, activity: <ul style="list-style-type: none"> <li>- at (a) to (f) above;</li> </ul> </li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>- in establishments in part 2 below;</li> </ul>	

## Part 2: Regulated Activity in relation to Children - Establishments

An activity is regulated activity in relation to children if carried out (subject to exceptions below):

- in one of the following establishments;
- frequently (once a week or more often), or on 4 or more days in a 30-day period;
- by the same person, engaged in work for or in connection with the purposes of the establishment; and
- it gives the person the opportunity, in their work, to have contact with children.

Day to day management or supervision on a regular basis of a person providing the above regulated activity for children is regulated activity for children.

Establishment	Exceptions – not Regulated Activity
Schedule 4, para 3(1) of the Safeguarding Vulnerable Groups Act 2006	
<p>(a) schools (all or mainly full-time, for children);</p> <p>(aa) pupil referral units (also known as Short Stay Schools) not falling within the above;</p> <p>(b) nursery schools;</p> <p>(d) institutions for the detention of children;</p> <p>(e) &amp; (f) children’s homes;</p> <p>(fa) children’s centres in England;</p> <ul style="list-style-type: none"> <li>▪ childcare premises (including nurseries).</li> </ul> <p>Day to day management or supervision on a regular basis of a volunteer activity which would be regulated if unsupervised. <i>Para 1(15).</i></p>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Activity by person contracted (or volunteering) to provide occasional or temporary services (not teaching, training or supervision of children). <i>Para 1(2A) &amp; (2B)(a);</i></li> <li>▪ Volunteering, under day to day supervision of another person engaging in regulated activity. <i>Para 1 (2B)(b).</i></li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity by a person in a group assisting or acting on behalf of, or under direction of another person engaging in regulated activity;</li> <li>▪ childcare premises which are the home of a parent etc. of at least one child to whom the childcare or child minding is provided;</li> <li>▪ for activity undertaken regularly in a number of different establishments, but only infrequently in each: each establishment is only arranging the</li> </ul>

	<p>activity infrequently, so each establishment is not a regulated activity provider in relation to that activity.</p>
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Note: Categories for office holders (“Positions” - Para 1(9) and Para 4) and for Inspectorates in England (sub-paragraphs of Para 1) are removed.

### **Regulated Activity (Adults)**

This provides information on the scope of regulated activity in relation to adults, as defined in the Safeguarding Vulnerable Groups Act 2006 (SVGA) and as amended by the Protection of Freedoms Act 2012 (PoFA) in England and Wales.

The definition of regulated activity for adults from 10<sup>th</sup> September 2012 will identify the activities provided to any adult which, if any adult requires them, will mean that the adult will be considered vulnerable at that particular time. The SVGA will no longer label adults as ‘vulnerable’ because of the setting in which the activity is received, nor because of the personal characteristics or circumstances of the adult receiving the activities.

This means, for example, anyone providing personal care to an adult is in regulated activity irrespective of whether that occurs in, say, a hospital, a care home, a day care centre, a prison or in sheltered housing.

There is no longer a requirement for a person to carry out the activities a certain number of times before they are engaging in regulated activity. Any time a person engages in the activities set out below, they are engaging in regulated activity.

### **General points**

1. Regulated activity continues to exclude any activity carried out in the course of family relationships, and personal, non-commercial relationships.
  - a) Family relationships involve close family (e.g. parents, siblings, grandparents) and relationships between two people who live in the same household and treat each other as family.
  - b) Personal, non-commercial relationships are arrangements where either no money changes hands, or any money that does change hands is not part of a commercial relationship (for example, gifting a friend money for petrol after they have driven you to the hospital), and the arrangement is made between friends or family friends.
2. An adult is a person aged 18 years or over.
3. A person whose role includes the day to day management or supervision of any person who is engaging in regulated activity, is also in regulated activity.

### **New definition of regulated activity Adults**

There are six categories within the new definition of regulated activity.

## 1. **Providing Healthcare**

The provision of health care by any health care professional to an adult, or the provision of health care to an adult under the direction or supervision of a health care professional, is regulated activity. A health care professional is a person who is regulated by one of the following professional regulators:

- General Medical Council
- General Dental Council
- General Optical Council
- General Osteopathic Council
- General Chiropractic Council
- General Pharmaceutical Council
- Pharmaceutical Society of Northern Ireland
- Nursing and Midwifery Council
- Health Professions Council

Health care includes all forms of health care provided for adults, whether relating to physical or mental health, and includes palliative care. This includes diagnostic tests and investigative procedures. Health care also includes procedures that are similar to forms of medical or surgical care that are not provided in connection with a medical condition. An example of this is taking blood from a blood donor or cosmetic surgery.

- The provision of psychotherapy and counselling to an adult which is related to health care the adult is receiving from, or under the direction or supervision of, a health care professional, is regulated activity. This would include the provision of psychotherapy and counselling over the telephone. Life coaching is excluded. The secondary legislation that will bring psychotherapy and counselling into regulated activity is soon to be laid before Parliament (as of September 2012).
- First aid, when any person administering the first aid is doing so on behalf of an organisation established for the purpose of providing first aid (for example, St John Ambulance Service), is regulated activity. This includes first aid given by Community First Responders.
- A worker employed for another purpose who volunteers, or is designated, to be that organisation's first aider is not in regulated activity. For example, a person who works in a department store whose role includes being a first aider is not engaging in regulated activity.
- Members of peer support groups (for example, Alcoholics Anonymous), are not in regulated activity, even if the group is directed or supervised by a health care professional.
- All staff who work in community pharmacies and opticians who are not regulated health care professionals will be excluded from regulated activity. For example, a person who works in a high street pharmacy providing health advice to customers over the pharmacy counter will not be in regulated activity.
- Staff in GP surgeries or dental practices who do not provide health care (for example, receptionists) will not be in regulated activity.

## 2. Providing Personal Care

- Anyone who provides an adult with physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of the adult's age, illness or disability, is in regulated activity.
- Anyone who prompts and then supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without that prompting and supervision, is in regulated activity.
- Anyone who trains, instructs or provides advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability, is in regulated activity.
- There is one exception to this. Excluded from regulated activity is any physical assistance provided to an adult in relation to the care of their hair when that assistance relates only to the cutting of the adult's hair. This is to ensure that hairdressers who cut the hair of patients and residents in hospitals and care homes are not engaging in regulated activity.

Illustrative examples:

1. A care assistant in a care home who cuts and files an adult's nails to keep the nails short and safe, because the adult cannot do it themselves, because, for example, they cannot see well enough, would be engaging in regulated activity.
2. A beauty therapist who attends a day care centre once a week and provides manicures for anyone who would *like* one, instead of for people who *need them* because of their age, illness or disability, is not engaging in regulated activity.
3. A volunteer who prepares and serves a meal to an adult in their own home (but does not feed the adult) is not engaging in regulated activity. To be engaged in regulated activity you must provide physical assistance to the person, for example spoon feeding that person, or you must be prompting and supervising (for example, prompting and supervising a person with dementia, because without it they would not eat), or you must be training or instructing (for example, teaching a person who has suffered a stroke to eat using adapted cutlery).
4. A health care assistant on a hospital ward who feeds an adult because they are too frail to feed themselves would be engaging in regulated activity.
5. A worker in a care home who reminds a person with dementia to eat their lunch, and ensures they do so is in regulated activity.

## 3. Providing Social Work

The activities of regulated social workers in relation to adults who are clients or potential clients are a regulated activity. These activities include assessing or reviewing the need for health or 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 at least one of the following, is in regulated activity:

- managing the person's cash,
- paying the person's bills, or
- shopping on their behalf.

Illustrative examples:

1. A volunteer who collects shopping lists and the cash to pay for the shopping from older adults' homes, who then does the shopping on their behalf, would be engaging in regulated activity.
2. A befriender who helps a disabled person compile their weekly shopping list is not in regulated activity.

## **5. Assistance in the conduct of a person's own affairs**

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 Advocate.
- Being an Independent Mental Capacity Advocate.
- Providing independent advocacy services under the National Health Service Act 2006 or National Health Service (Wales) Act 2006.
- Receiving payments on behalf of that person under the Social Security Administration Act 1992 is in regulated activity.

## **6. Conveying**

The secondary legislation that will prescribe when conveying is regulated activity is soon to be laid before Parliament (as of September 2012).

- Any drivers and any assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving, health care, relevant personal care or relevant social work, are in regulated activity. The driver does, or the person assists in, such conveying for the purpose of enabling the adult to receive services. Health care, relevant personal care and relevant social work are discussed above.
- In addition, hospital porters, Patient Transport Service drivers and assistants, Ambulance Technicians and Emergency Care Assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving, health care, relevant personal care or relevant social work, are also in regulated activity.
- Conveying does not include licensed taxi drivers or licensed private hire drivers, and does not include trips taken for purposes other than to receive health care, personal care or social work (for example, trips for pleasure are excluded).

Illustrative examples:

1. A person who volunteers to take an adult to and from their GP appointment on behalf of a community group is in regulated activity. It would not matter if that person

knows, or is friends with, the adult they were taking to the appointment if the conveying is on behalf of the group.

2. A friend who takes their neighbour to a hospital appointment would not be in regulated activity, as this is a personal relationship.

### **Statutory guidance: Regulated Activity (children) - supervision of activity with children which is regulated activity when unsupervised**

1. This document fulfils the duty in the Safeguarding Vulnerable Groups Act 2006<sup>1</sup> and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007<sup>2</sup> that the Secretary of State must publish statutory guidance on supervision of activity with children, which when unsupervised is regulated activity. This guidance applies in England, Wales and Northern Ireland.

<sup>1</sup> 2006 Act, amended by Protection of Freedoms Act 2012: Sch 4, para 5A: guidance must be *“for the purpose of assisting” organisations “in deciding whether supervision is of such a kind that” the person being supervised is not in regulated activity.*

<sup>2</sup> 2007 Order, Sch 2, para 5A is as above on guidance on “supervision” for Northern Ireland.

2. For too long child protection policy has been developed in haste and in response to individual tragedies, with the well-intentioned though misguided belief that every risk could be mitigated and every loophole closed. The pressure has been to prescribe and legislate more. This has led to public confusion, a fearful workforce and a dysfunctional culture of mistrust between children and adults. This Government is taking a different approach.

3. We start with a presumption of trust and confidence in those who work with children, and the good sense and judgement of their managers. The law is that supervision must be reasonable, which gives local managers the flexibility to determine what is reasonable for their circumstances. In law, an organisation will have no entitlement to do a barred list check on a worker who, because they are supervised, is not in regulated activity.

4. The precise nature and level of supervision will vary from case to case. The duty means that organisations must ensure that the supervision in place is sufficient, in their judgement, to provide reasonable assurance for the protection of the children concerned.

5. The duty that supervision must take place “on a regular basis” means that supervision must not, for example, be concentrated during the first few weeks of an activity and then tail off thereafter, becoming the exception not the rule. It must take place on an ongoing basis, whether the worker has just started or has been doing the activity for some time.

7. Within the statutory duty, the level of supervision may differ, depending on all the circumstances of a case. Organisations should consider the following factors in deciding the specific level of supervision the organisation will require in an individual case:



- the age of the children concerned;
- the number of children that the individual is working with;
- whether or not there are other carers/ adults around;
- the nature of the individual's work or contact with the children;
- the vulnerability of the children;
- the experience of, and checks carried out on, the person being supervised;
- the number of people being supervised.

## **EXAMPLES**

### ***A supervised volunteer, in a specified place***

Mr Jones, a new entrant volunteer, helps children with their reading at a local school for two mornings a week. Mr Jones is generally based in the classroom, in sight of the teacher. Sometimes Mr Jones takes some of the children to a separate room to listen to them reading, where he is supervised by a paid classroom assistant, who is in that room most of the time.

- A person in regulated activity (either the teacher or the classroom assistant) is supervising Mr Jones to the statutory standard;
- therefore Mr Jones is not in regulated activity and the law does not give the school a duty (or power) to do a barred list check on Mr Jones.
- The law does not place on the school a duty to require an enhanced DBS check, but the school is entitled to do so.

The school chooses to do an enhanced DBS check.

### ***A supervised volunteer, not in a specified place***

Mr Wood, a new entrant volunteer, assists with the coaching of children at his local cricket club. The children are divided into small groups, with assistant coaches such as Mr Wood assigned to each group. The head coach, Mr Smith, oversees the coaching, spends time with each of the groups, and has sight of all the groups (and the assistant coaches) for most of the time. A barred list check has been done on Mr Smith, as he is in regulated activity.

- A person in regulated activity (Mr Smith) is supervising Mr Wood to the statutory standard;
- therefore the club must not require a barred list check on Mr Wood.
- The law does not place on the club a duty to require an enhanced DBS check, but the club is entitled to if it chooses to.

The club chooses not to do an enhanced DBS check. They take special care in places where children may be particularly vulnerable, such as changing rooms.

***Unsupervised volunteer, not in a specified place***

Mrs Shah starts as an activity organiser at a youth club. She instructs a group of children, is not herself supervised, and supervises a number of paid assistant leaders. The youth club manager has known Mrs Shah well for many years.

- Mrs Shah is entering regulated activity, and therefore the club must obtain a barred list check on Mrs Shah;
- The law does not require the youth club to do an enhanced DBS check, but the youth club is entitled to if it chooses to.

The club manager does the barred list check which he must do, and chooses not to do an enhanced DBS check.

***Department for Education / Department of Health, Social Services and Public Safety (Northern Ireland), May 2012***

### Appendix Figure 3

#### **RISK ASSESSMENT TEMPLATE – EMPLOYEES STARTING WORK BEFORE AN ENHANCED DBS CHECK IS RETURNED**

Please complete this form fully as it will form the basis of a decision to appoint/not to appoint someone into a position subject to it.

**If a Barred List check is not applicable for this role, approval for allowing an applicant to start, based on the completion of this risk assessment must be approved by the appropriate Head of Service.**

Name of Manager/Head Teacher

Name of Applicant

Position Applied For

Service / School

Start Date

Date of Risk Assessment

Previous work experience (outline previous roles and experience)

Questions	Comments
Is this post eligible for a Barred List Check? <i>If 'No', then sign off will be required by an appropriate Head of Service on the completion of this form before the applicant may start in role.</i>	Yes No
Has the Barred List check been undertaken if applicable? <i>See Appendix Figure 2 to determine if applicable. If it is applicable and the answer here is 'no' then this must be undertaken – contact HR Direct.</i>	Yes No
Is the applicant barred from working with Children/Adults? <i>If 'Yes' end process now.</i>	Yes No
Have all Pre-employment checks been undertaken including <ul style="list-style-type: none"> <li>▪ References checked and verified.</li> <li>▪ Application form checked and all breaks in employment and or training are accounted for.</li> </ul>	Yes No

Questions	Comments
<ul style="list-style-type: none"> <li>▪ Identity has been validated.</li> </ul>	
Has a correctly completed DBS check application form been sent to DBS?	Yes No
What level of and how much supervision is available to the applicant from an appropriately qualified and experienced member of staff?	
Can any safeguards be implemented to reduce/remove any risk e.g. no unsupervised contact?	Yes No
Does the post involve any direct responsibility with children and /or vulnerable adults?	Yes No
Has the applicant advised of any disclosures that the DBS check will show? If so, what is the impact of these – see Appendix Figure 4: Cause for Concern Risk Assessment Proforma.	Yes No
Any questions/additional comments from the applicant?	

Declaration by applicant and any additional comments in support of an employee starting work before an enhanced DBS check is returned:

I understand that if I am allowed to start work before my enhanced DBS check is returned it is subject to the information I have supplied and that this is complete and correct. False information, or a failure to supply the details required could lead to termination of employment.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Additional comments from the Manager/Head teacher

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Outcome of Risk Assessment (delete as appropriate):

Allow employee to begin before the enhanced DBS is returned?

Yes

No

Please state (if applicable) whether approval is dependent upon conditions being met, such as recommendations, restrictions or safeguards to be implemented by the employing service/school.

Name of Authorising Officer:

Signature of Authorising Officer:

I have considered the content of this risk assessment and give approval for the applicant to start in position, with the safeguards set out above put in place, prior to the return of an enhanced DBS check.

Name of Head of Service

Signature of Head of Service

Date

## Appendix Figure 4

### **CAUSE FOR CONCERN RISK ASSESSMENT FORM**

Please complete this form fully and discuss with an Lead DBS Signatory in HR Direct, as it will form the basis of a decision to appoint/not to appoint someone into a position where adverse disclosures have been identified on a returned DBS check.

Name of Manager/Head Teacher

Name of Applicant

Name of HR Specialist

Position Applied For

Service/School

Date of Risk Assessment

Questions	Comments
Nature of incident as outline on the DBS certificate?	
Does the applicant meet all the essential criteria for the post in terms of skills, knowledge, experience and ability?	
Does the applicant agree that the information detailed on the DBS certificate is correct? In the event of a challenge from the applicant the matter needs referring to the disputes team at the DBS.	
The country in which the offence was committed e.g. some activities are offences in Scotland and not in England and/or Wales and vice versa. Whether the offence has since been decriminalised by Parliament.	
What was the nature of the crime, when did the relevant offence(s) occur (specify date), what were the circumstances involved and what was the sentence?	

Do the matters disclosed form any pattern? Was the offence a one-off, or part of a history of offending e.g. is the offence likely to re-occur?	
What is the seriousness of the offence(s) and relevance to the safety of other employees, customers, service users and property?	
Are there any assessments and reports from those agencies involved in the applicant's process of rehabilitation e.g. probation service, specialists working in prison, other agencies?	
Are the type and/or nature of the offence(s) directly relevant to the post?	
What is the nature of the contact the applicant will have with children/adults/the public and how vulnerable are they? If working with adults, will the applicant have access to finances or to items of value?	
Was the relevant offence committed at work (either paid or unpaid work)? Does the job present any opportunities for the applicant to re-offend in the place of work?	
Did the applicant declare the matters on the DBS disclosure application form and/or the DCC application form?	
Are there any mitigating circumstances e.g. any relevant information offered by the applicant about the circumstances that led to the offence being committed e.g. the influence of domestic or financial difficulties?	
Has the applicant's circumstances changed since the offence was committed, making re-offending less likely (e.g. improved personal circumstances, drug	

addiction therapy etc.). Can the applicant demonstrate any efforts not to re-offend? i.e. rehabilitation course	
Would the applicant do anything differently now - has their motivation changed? Does the individual regret the matter (degree of remorse) and what is their attitude towards the matters now?	
What level of and how much supervision is available to the applicant?	
Can any safeguards be implemented to reduce/remove any risk e.g. no unsupervised contact?	
Any questions/additional comments from the applicant?	

**Declaration by applicant and any additional comments in support of their employment**

I understand that any offer of employment will be subject to the information I have supplied and that this is complete and correct. False information, or a failure to supply the details required could make an offer of employment invalid or lead to termination of employment. I understand that this proforma will be held securely by HR Direct for 6 months from the date of the assessment if appointed/if not appointed. It will only be accessed if a) Regulatory/enforcement organisations ask for clarification on this recruitment decision, or b) any allegations are made against me during the course of my employment with the Council, where an investigation would require access to this data. It will be destroyed in line with the Council's Policy on the Secure Storage, Handling, Use, Retention and Disposal of Disclosures and Disclosure Information.

I consent to the above:



Signature:	Date
Full name	

Additional comments from the Manager/Head teacher	
Signature:	Date:

<p><b><u>Outcome of Risk Assessment (delete as appropriate):</u></b></p> <p>Continue with offer of employment / Withdraw offer of employment</p> <p>Please state (if applicable) whether approval is dependent upon conditions being met, such as recommendations, restrictions, safeguards to be implemented by the employing service/school.</p> <p>Authorising Officer: Please also consider whether your decision may have an impact on another head of service and their service provision.</p> <p>Name of Authorising Officer:</p> <p>Signature of Authorising Officer:</p>
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## Appendix Figure 5

### **POLICY STATEMENT ON THE RECRUITMENT OF EX-OFFENDERS**

1. As an organisation using the DBS to assess applicants' suitability for positions of trust, Denbighshire County Council complies fully with the DBS Code of Practice and undertakes to treat all applicants for positions fairly, it undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information revealed.
2. Denbighshire County Council is committed to the fair treatment of its staff, potential staff or users of its services, regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background.
3. We actively promote equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records. We select candidates for interview based on their skills, qualifications and experience.
4. A Disclosure is only requested after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a Disclosure is required, all application forms and recruitment briefs will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.
5. Where a Disclosure is to form part of the recruitment process, we encourage all applicants called for interview to provide details of their criminal record at an early stage in the application process. We request that this information is sent under separate, confidential cover, to a designated person with Denbighshire County Council and we guarantee that this information is only seen by those who need to see it as part of the recruitment process.
6. We ensure that all those in Denbighshire County Council who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. We also ensure that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.
7. At interview, or in a separate discussion, we ensure that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of an offer of employment.
8. We make every subject of a DBS Disclosure aware of the existence of the DBS Code of Practice and make a copy available on request.

9. We undertake to discuss any matter revealed in a Disclosure with the person seeking the position before withdrawing a conditional offer of employment.

**Having a criminal record will not necessarily bar you from working with us.** This will depend on the nature of the position and the circumstances and background of your offences.

## Appendix Figure 6

### **POLICY STATEMENT ON THE SECURE STORAGE, HANDLING, USE, RETENTION AND DISPOSAL OF DISCLOSURES AND DISCLOSURE INFORMATION SUPPLIED BY THE DBS.**

#### **General Principles**

As an organisation using the DBS to help assess the suitability of applicants for positions of trust, Denbighshire County Council complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of Disclosures and Disclosure information. It also complies fully with its obligations under the Data Protection Act and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Disclosure information.

#### **Storage and Access**

Disclosure information is never kept on an applicant's personnel file, only evidence of a check having been undertaken will be recorded on Trent. Any sensitive information is always kept separately and securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties.

The following details of all DBS checks will be maintained for employed members of staff on the HR System (Trent):

- DBS type
- Date DBS valid from
- DBS checked by
- DBS renewal date
- Disclosure certificate number
- The position for which the Disclosure was requested
- Children or vulnerable adults or both
- Who the information has been shared with
- Form reference number

#### **Handling**

In accordance with section 124 of the Police Act 1997, Disclosure information is only passed to those who are authorised to receive it in the course of their duties. We maintain a record of all those to whom Disclosures or Disclosure information has been revealed and we recognise that it is a criminal offence to pass this information to anyone who is not entitled to receive it.

#### **Usage**

Disclosure information is only used for the specific purpose for which it was requested and for which the applicant's full consent has been given.

## **Retention**

Once a recruitment (or other relevant) decision has been made, we do not keep Disclosure information for any longer than is absolutely necessary. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep Disclosure information for longer than six months, we will consult the DBS about this and will give full consideration to the Data Protection and Human Rights individual subject before doing so. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail.

## **Disposal**

Once the retention period has elapsed, we will ensure that any Disclosure information is immediately suitably destroyed by secure means, i.e. by shredding, pulping or burning. While awaiting destruction, Disclosure information will not be kept in any insecure receptacle (e.g. waste bin or confidential waste sack). We will not keep any photocopy or other image of the Disclosure or any copy or representation of the contents of a Disclosure. However, notwithstanding the above, we will keep a record of the date of issue of a Disclosure, the name of the subject, the type of Disclosure requested, the position for which the Disclosure was requested, the unique reference number of the Disclosure and the details of the recruitment decision taken.

## **Reproductions of Disclosures**

With the consent of the applicant, a copy of their DBS certificate will be taken.