

Registration under the Health and Social Care Act 2008

**Disclosure and Barring Service (DBS)  
checks** (formerly criminal record (CRB) and  
barring checks)

June 2013

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## Summary

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There are two main situations when people working in health and adult social care services registered under the Health and Social Care Act 2008 (HSCA) will need to consider having DBS checks:

- On registering with CQC.
- When working in a health or social care service providing activities including regulated activity as defined in the Safeguarding Vulnerable Groups Act 2006 (SVGA), which has been amended by the Protection of Freedoms Act 2012 (PoFA). This includes staff who provide health care in GP practices, other primary medical services and dentistry.

This guidance will explain who needs to consider having a DBS check in each of the above situations and the process for applying.

On 1 December 2012, the services of the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) merged, and the Disclosure and Barring Service (DBS) was created.

### **Please note:**

1. 'Regulated activity' is a term common to both the regulation of care services under the Health and Social Care Act 2008 (HSCA), and to the process of barring people from certain types of work. The term means different things in the two different contexts.

Regulated activities for the purposes of barring are defined in the [Safeguarding Vulnerable Groups Act](#) (SVGA). In this guidance, 'regulated activity' refers to those activities defined in the SVGA unless specifically described as a HSCA regulated activity.

Appendices 2 and 3 provide detail of regulated activities defined in the SVGA.

2. In this guidance the term 'registered person(s)' refers to providers/managers registered with CQC under the Health and Social Care Act 2008.
3. Text that links to other documents or websites is highlighted in [blue and underlined](#). Ctrl and click over this text to go to the linked document.

# Disclosure and Barring Service (DBS) checks

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## 1. What is the role of the Disclosure and Barring Service (DBS)?

The role of the DBS is to help employers in England and Wales make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children.

The DBS was established under the Protection of Freedoms Act 2012 and carries out the functions previously undertaken by the CRB and ISA. It is a non-departmental public body and provides a joined up service that combines criminal records and barring functions.

The service and processes previously provided by the CRB have not changed. In addition, the DBS maintains the barring lists previously managed by the Independent Safeguarding Authority (ISA).

When someone applies for a DBS check, the DBS checks the police national computer to see if there are any convictions, cautions, warnings or reprimands listed for the applicant. DBS may also ask the police to consider if they have any local police information about the person that is relevant to disclose. In certain circumstances, and when it is applied for, the DBS will provide information about whether the person is barred from working with vulnerable groups, including children.

From 17 June 2013, the DBS only sends the certificate to the person applying for the check (the applicant). Before this date, they also sent a copy of the certificate to the person who countersigned the application.

The DBS also has duties and powers to share information with professional bodies such as CQC, the General Medical Council and other organisations.

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## 2. Why are DBS checks important?

DBS checks help to keep those who are known to pose a risk to people who use CQC registered services out of the workforce. Various inquiries into deaths and injuries of children and people using health or social care services have shown the importance of good recruitment practice. For example, the [Richard inquiry](#) stressed how important recruitment checks are in keeping people safe.

However, DBS checks are only one aspect of ensuring effective and safe recruitment practices and should not be used in isolation. Providers should also use other mechanisms, such

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as checking employment history and any gaps, reviewing references, etc. to assure themselves as far as possible that all employees are of good character and are fit to work in their health or adult social care service.

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**3. What type of checks can be made?**

The following DBS checks can be made:

- Standard check
- Enhanced check
- Enhanced check and barred list check (child)
- Enhanced check and barred list check (adult)
- Enhanced check and barred list check (child and adult).

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**4. What is the difference between a criminal record check and a barred list check?**

A criminal record check will reveal information relating to a person's criminal record. This includes convictions, cautions, reprimands and warnings. When an enhanced check is applied for, the police may also disclose relevant local police information.

A barred list check will show if a person is barred, that is prevented, from working in a regulated activity either with children, adults, or both. To knowingly employ a person who is barred by the DBS to perform a regulated activity is a criminal offence.

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**5. What is a standard DBS check?**

Standard DBS checks show convictions held on the police national computer, including 'spent' convictions, together with cautions, reprimands and warnings. Please note: a Court of Appeal judgement in January 2013 stated that the disclosure of all cautions and convictions on a DBS certificate was incompatible with Article 8 of the Convention for Human Rights. As a result, filtering rules for old and minor cautions and convictions are being introduced. For more details see the [DBS website](#).

A standard check does not show whether a person is barred from working with children or adults. If the DBS receives an application for a standard check that includes a request for a check against the barred list, it will be halted and returned unprocessed.

Under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, healthcare organisations may request a standard level check only where the position involves the individual having "access to patients in the course of their normal duties".

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There is further guidance on eligibility for NHS positions on [the NHS Employers website](#).

For more information about eligibility see the [eligible positions guide](#) on the DBS section of the 'gov.uk' website. Additionally, the Government are to publish a note setting out the circumstances when an organisation can require a DBS check at all levels. The DBS also intends to publish a 'decision tree' on its website to help organisations decide whether a member of staff is eligible for a check and, if so, at what level.

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## 6. What is an enhanced DBS check?

Enhanced checks contain all the information in a standard check plus any local police information about the applicant that the police believe is relevant and ought to be disclosed.

Since 10 September 2012, the police have had to apply a more rigorous relevancy test before disclosing this type of information. The police must now reasonably believe that the information is relevant to the position the person is applying for. Previously they only had to believe it *might* be relevant.

An enhanced check **does not** contain barred list information.

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## 7. When can someone apply for an enhanced DBS check without barred list information?

An organisation can require an enhanced check *without* a barred list check for people who were in regulated activity before 10 September 2012 but, due to legislative changes, the activity they undertake is no longer defined as regulated activity.

The Government will publish a note setting out the circumstances when an organisation can require a DBS check at all levels. The DBS also intends to publish a 'decision tree' on its website to help organisations decide whether a member of staff is eligible for a check and, if so, at what level.

In the interim, to establish if this is the case for those working with adults, providers need to consider if the person was providing regulated activity as defined in the SVGA **before** it was amended by the PoFA on 10 September 2012, but that activity is no longer included in the definition.

If a person working with adults meets *all* the requirements below, then an employer can request an enhanced check *without* barred list information:

- The adults with whom the person works fall into the definition of adults set out in section 59 of the SVGA (before it was amended by the PoFA).

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- The person provides any of the regulated activities relating to adults set out in Part 2 of Schedule 4 to the SVGA (before it was amended by the PoFA).
  - The person undertakes the work regularly (the meaning of this is set out in Part 3 of Schedule 4 to the SVGA (before it was amended by the PoFA)).
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## **8. What is an enhanced DBS check *with* barred list information?**

These checks contain information on cautions, convictions,<sup>1</sup> reprimands and warnings as well as any local police information about the applicant that the police believe is relevant and ought to be disclosed. In addition, they include a check of the children's, adults', or children's and adults' lists.

Barred list information relates to the lists of people, held by the DBS, who are barred from working in regulated activity. Regulated activity for the purpose of this document refers to activity as defined in the SVGA as amended by PoFA 2012.

At present, barred list checks cannot be applied for without an application for an enhanced check, but this will change in the future. A service is being developed that will enable a stand-alone check for barred list information. This service will only tell the organisation if the applicant is, or isn't barred. There is more information on the [DBS section](#) of the 'gov.uk' website.

For more information about the current definition of regulated activity under the SVGA, see [Appendices B](#) and [C](#) and follow the links below:

<https://www.gov.uk/government/publications/dbs-regulated-activity>

<http://www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/a00209802/disclosure-barring>

<http://media.education.gov.uk/assets/files/pdf/r/regulated%20activity%20children%20full%20information%20ewni%20final%202012-06-01.pdf>

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<sup>1</sup> **Please note:** A Court of Appeal judgement in January 2013 stated that the disclosure of all cautions and convictions on a DBS certificate was incompatible with Article 8 of the Convention for Human Rights. As a result, filtering rules for old and minor cautions and convictions are being introduced. For more details see the DBS website.

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**9. Who can apply for an enhanced DBS check with barred list information?**

Only people undertaking a role falling within the definition of regulated activity in the SVGA are subject to the barring regime. Barred list information is not routinely given with an enhanced check. The applicant must indicate whether or not they will be working in a regulated activity with adults and/or children when they request a check. If they are, they will be eligible for a check of barred list information. Organisations can only require staff or volunteers to apply for this type of check if those staff or volunteers engage in 'regulated activity'.

The DBS can only bar a person from working in regulated activity if it believes the person is, has been, or might in the future be engaged in regulated activity. The only exception to this is where a person is convicted of or cautioned in relation to a prescribed offence<sup>2</sup>. In this case, they would be automatically included in the barred list and ineligible to submit representations against their inclusion in the barred list. Prescribed offences are the most serious offences.

Enhanced with barred list checks must only be applied to those positions that fall under the revised definition of regulated activity. Examples of positions that are unlikely to be eligible under the revised definition of regulated activity are administrators, receptionists, cleaners, chefs, catering staff, laundry assistants and caretakers.

In all cases, employers will need to consider the roles and responsibilities and level of contact with children and adults before applying for a DBS check to make sure they apply for the correct level of check. It is not enough to only consider the job title. Eligibility is based on the activity undertaken by that staff member or volunteer. If a provider has doubts about what level of DBS check is appropriate, they can contact the DBS to seek their advice.

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<sup>2</sup> See paragraph 7(1) of Schedule 3 to the SVGA, and regulation 5 and paragraph 3 of Schedule 1 to the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations SI 2009/37.

## Registration with CQC

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### **10. Who needs a DBS check when registering with CQC?**

Everyone applying to be registered persons (individuals, all partners and registered managers) must obtain an enhanced CQC countersigned DBS check with barring information before submitting an application to register with us.

This is because once they are registered with CQC, people in these roles will have statutory responsibility for the service to the extent that they may be expected, at any time, to step in and undertake the hands-on delivery of, for example, personal care, or day-to-day management and oversight of the service being delivered – both of which are regulated activities.

Nominated individuals are not registered with CQC and therefore do not need a CQC countersigned DBS check as part of the registration process. However, we expect providers to look at the responsibilities and activities of nominated individuals with people who use the service and carry out the appropriate checks. Providers may be asked to provide evidence of this.

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### **11. How does someone applying to become a registered person apply for a CQC countersigned DBS check?**

The application process for a CQC countersigned DBS check is an online process. The system can be accessed through either [our website](#) or the [Post Office website](#).

The online system will explain the process step by step.

After the applicant has completed the online form, they should visit a post office with their proof of identity, address documentation and appropriate fee (unless the applicant satisfies the free of charge volunteer criteria). They should take their referral letter with them. Once verified by the Post Office, the electronic form will be countersigned by CQC and sent to DBS. Applicants will be able to track the progress of their application using the online tracking system on the DBS website.

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### **12. What is CQC's approach to applications for registration from people who have committed offences?**

If an offence or other information is disclosed, this does not necessarily mean that a registration will be refused.

We will consider each individual case fairly and take into account whether the offence or other information indicates a risk to people using the service.

We will take into account the nature of the offence or other information disclosed, the role the person is to fulfil, the type of service for children or adults involved, and the circumstances and needs of the children or adults likely to use the service.

Our decisions will be made on the basis of an assessment of any risk to children or adults, rather than the simple fact that a conviction or other information is disclosed. However, where there is significant doubt, the decision will always favour the welfare of the children or adults using the service.

We consider any information disclosed alongside the other information submitted by applicants, which we obtain during the registration assessment, in order to satisfy ourselves about the applicant's fitness and their compliance with the requirements.

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**13. Portability: can DBS checks be used for more than one application for registration?**

People applying for registration with CQC can satisfy the requirement for a DBS check if:

- they are currently working in services regulated by CQC AND
- they can provide evidence of a CQC countersigned enhanced check with barred list information that is less than six months old.

If these requirements are satisfied no new certificate is required.

The DBS launched the Update Service on 17 June 2013. The Update Service will allow the applicant (the person who the check is about) to apply for a DBS check only once and then, if they subsequently need a further check of the same type, to use their existing certificate.

To do this, the applicant would have to subscribe to the Update Service and pay an annual subscription fee. The organisation employing them would, with the person's consent, be able to check online to see if the information on their certificate was still up to date. The intention is to avoid many repeat applications. See the [DBS section](#) of the 'gov.uk' website for further details.

## Providers' own DBS checks on staff

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### **14. What are health and adult social care providers expected to do when employing new staff?**

All health and social care providers registered with CQC, including dental and primary medical services, are responsible for checking the suitability of their staff.

We expect providers to undertake checks at the appropriate level for staff and volunteers who are eligible for them. They should consider the eligibility of everyone employed,<sup>3</sup> including: contracted staff, temporary staff, bank staff, practitioners working under practising privileges, volunteers, students and learners, and contractors. In general and dental practices, as well as GPs and dentists, this is likely to include health visitors, nursing staff, and dental technicians. It may also include front office reception staff, depending on their duties, which can vary greatly depending on the size of the practice. The NHS Employers organisation has produced some Q&As and a decision tree tool to support the decision-making process in respect of staff and volunteers in the NHS. This is on the [tools and resources page](#) of its website. The DBS also intend to publish a 'decision tree' to help organisations decide if members of staff are eligible for a check and, if so, at what level.

In all settings, the eligibility for checks and the level of that check depends on the roles and responsibilities of the job. Providers should risk-assess different roles and look at their responsibilities and activities to determine if staff are eligible for a DBS check and to what level. We would expect providers to be able to show they have undertaken this risk assessment, especially where they have decided not to undertake a check.

CQC has the power to take enforcement action if providers decide not to take up DBS checks on eligible staff, or if the provider cannot provide sufficient evidence of seeking appropriate assurances that a check has been undertaken. We would take enforcement action in circumstances where, in our view, people using the service are considered to be at risk because of the decision not to undertake these checks and where it is an indication of poor recruitment procedures. We will take a fair and proportionate approach and consider providers' risk assessments when making our decision.

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<sup>3</sup> Guidance about compliance: Essential standards of quality and safety (Appendix A).

If an employer or supplier of staff knows, or has reason to believe, that a person is barred from a regulated activity, it is an offence to permit or supply them to engage in that regulated activity. CQC will take action if providers knowingly employ a person who is known or believed to be barred.

Providers registered to carry on care services often delegate staff recruitment and vetting to specialist staff or departments, but accountability for making sure that recruitment practice meets all legal requirements rests with the registered person.

Having a criminal conviction does not in itself make a person unsuitable for work in health or social care. If a DBS check discloses a conviction or other relevant information, the employer has to decide whether the person is suitable to be employed in their service. When doing so, they need to assess the potential risks, taking into account the nature of the information, how old it is and its relevance to the activities the person would undertake and the circumstances and needs of the people using the service.

DBS checks are only one aspect of ensuring effective and safe recruitment practices. Providers should also use other mechanisms, including checking employment history and gaps and reviewing references. This way, they can assure themselves as far as possible that all employees are of good character and are fit to work in their service.

The decision about whether or not to employ a person should be taken in the context of the provider's responsibility for the wellbeing of the people who use the service. Information about the recruitment of ex-offenders is provided on the [DBS pages](#) of the 'gov.uk' website.

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**15. How do providers ask for a DBS check?**

Applications for a DBS check are made on forms that are available from the DBS. Some employers and 'umbrella bodies' also keep a supply of forms.

Umbrella bodies are organisations that are registered with the DBS to countersign applications for other employers. There is a list of umbrella bodies on the DBS website.

After an applicant has filled in a form, an authorised person must countersign it before it is sent off.

There are two ways to get an application form countersigned by an authorised person:

1. Large service providers that submit at least 100 applications a year can apply to become a 'registered body' (these are organisations that have registered directly with DBS to use its services). Authorised 'counter-signatories' in registered bodies can countersign applications from potential staff.

Applications to become a registered body should be made to the DBS, **not** to CQC. You can get more information from the [DBS pages](#) of the 'gov.uk' website

2. Providers can ask an 'umbrella body' to countersign and send in applications for them.

An authorised counter signatory in the umbrella body or registered body countersigns the form to make an official declaration regarding the person's identity. However, umbrella bodies or registered bodies can authorise a separate 'evidence checker' to carry out first-stage identity checking, which may include a face-to-face check. When the authorised counter signatory has signed the form, they then send it off to the DBS.

CQC is not an umbrella body and cannot countersign forms for people who have applied to work in a health or adult social care service.

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## **16. How do providers apply for barred list checks?**

The employer or the umbrella body (or registered body on their behalf) will ask for a check of the children's and/or adults barred lists when making an application to the DBS for people engaging in regulated activity.

### **Adults**

For those who want to work or be a volunteer in regulated activity, carry on or manage a regulated health or social care service for adults, we expect a check to be made of the adults barred list. When verifying applications, the counter signatory will check box X65 on the new DBS application form to ask for the check to be made.

### **Children**

For those applying to work or be a volunteer in regulated activity, carry on or manage a service that works with children, we expect a check to be made of the children's barred list. When verifying applications, the counter signatory will check box X64 on the new DBS application form to ask for the check to be made.

## Working with adults and children

Where applicants want to work or volunteer in a regulated activity with both adults and children, the counter signatory will check boxes X64 and X65 when verifying applications.

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### 17. What if a provider needs a new member of staff to start work urgently?

New members of staff who are going to work in regulated activity with adults can begin work before their DBS certificate has arrived, using the 'Adult First' system. But this should only happen if the safety of people using the service would be put at risk if the person wasn't started in their role. Providers must be able to demonstrate sound reasons for not waiting for the full DBS check before a person takes up post.

Adult First is a service that allows an individual to be checked against the adults' barring list while waiting for the full DBS check to be completed. It can only be used where the registered umbrella body has payment on account arrangements with the DBS and email facilities. The DBS also needs to have received an application for an enhanced check with barred list information in order to process an Adult First check.

There is no equivalent 'quick check' of the children's barred list so an Adult First check is not appropriate if a person intends to work with both children and adults. Those working with both groups will need to wait for the certificate to be returned to find out whether a person is barred from working with children.

For services registered with CQC under HSCA, arrangements are covered under the *Guidance about Compliance: Essential standards of quality and safety* as follows:

Outcome 14 covers induction arrangements that apply to all workers regardless of whether they start work before a DBS certificate is received:

- All staff receive a comprehensive induction that takes account of recognised standards within the sector and is relevant to their workplace and their role.
- It is undertaken when they start their job and is completed before they are allowed to work unsupervised.
- It includes at least:
  - the aims, objectives and purpose of the service;
  - information on the people whose care, treatment and support they will be involved in providing, and any specific communication needs;

- the rights of people who use the service;
- the policies and procedures of the service;
- the action to be taken in an emergency;
- health and safety risk assessments;
- how to report an incident;
- the arrangements for their own support and supervision;
- the support and safety arrangements of lone working, where this applies; and
- the arrangements for reporting where the service falls below essential standards of quality and safety.

Under Outcome 12A, staff working with adults can only start work before a DBS certificate is received provided they have been subject to an Adult First check (which confirms that they are not barred) and subject to the following safeguards:

- An appropriately qualified and experienced member of staff is appointed to supervise them.
- Wherever it is possible, this supervisor is on duty at the same time as the new worker, or is available to be consulted; and
- New workers do not escort people away from the premises unless accompanied by a member of staff for whom a full and satisfactory DBS certificate has been received.

Further safeguards apply to particular types of service – see questions below.

### **Adult First process**

The applicant should complete a DBS application form and pass it to a counter signatory in the normal way, asking for an Adult First check.

The counter signatory completes an online Adult First application form as well as checking the applicant's identity, then signs the DBS application form and sends it off.

The details on the DBS application form must match exactly those on the online Adult First application. The form will be rejected if they do not.

The DBS compares the applicant's details on the paper form with those in the online Adult First application before checking the Adults Barred List. They must match exactly.

There is no equivalent check to Adult First For people who have applied to work with children. However, within the NHS, employers may appoint a person before receiving the DBS certificate but only in exceptional circumstances. That is, where there is an urgent need to appoint because of the risk to patient safety. Decisions to appoint before receiving the certificate should be made only after a risk-based assessment, and safeguards should be put in place to manage that person.

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**18. What are the Adult First supervision arrangements for new staff in a domiciliary care agency?**

Outcome 12D of the Essential standards of quality and safety covers the additional safeguards that we expect to be in place if a worker starts before a DBS certificate is received:

- The provider should contact people using the service, or their representative, at weekly intervals to monitor their satisfaction with the care provided by the new worker and any complaints that may arise.
- The provider should inform people using the service, or their representative, about the outstanding information, and tell them when it is received.
- The provider should end the new worker's contact with people using the service where the registered person considers that the outstanding information (when received) is not satisfactory.

There is no requirement for the staff member to be directly supervised provided they have completed their induction.

Where a new member of staff is to care for or support children in a regulated activity, a satisfactory enhanced and barred list check **must** be received before they begin to do so.

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**19. Who does the DBS send the certificates to?**

Before 17 June 2013, the DBS sent a copy of the certificate to both the applicant and the counter signatory. If the counter signatory was an umbrella body the employer could ask them to forward a copy to them.

The DBS now only sends a copy of the certificate to the applicant – the employer and the registered/umbrella body will not receive a copy. They will need to ask the applicant to see their certificate and to keep a record of the relevant details. See question 20 below for more information.

**20. Where do the police send further relevant information?**

On 10 September 2012, the Government repealed the provisions that allowed for police to disclose information separately from the certificate. This was commonly referred to as 'brown envelope' information. Instead, local police use their common law powers to disclose information directly to the employer/registered umbrella body where they feel it is necessary. They can contact employers or counter signatories directly on a force-by-force basis.

Information that the police pass directly to employers must not be revealed to the applicant or another person who is not involved with the recruitment decision without the permission of the Chief Police Officer. It is an offence to do so. There will be no central mechanism for this as the information is held locally by each force and they will decide if, and how, it is released.

It is the responsibility of the provider, NOT the umbrella body, to decide if a person is suitable to work in the service if relevant information is disclosed. They will need sufficient information from the umbrella body to make their decision.

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**21. Do providers new to registration have to apply for retrospective DBS checks on their staff?**

As described above, we expect providers to undertake checks at the appropriate level for staff and volunteers who are eligible for them.

There is no legal requirement to carry out retrospective or periodic DBS checks. But employers can ask staff and volunteers to apply for a DBS certificate whenever they think it is necessary. When considering the appropriateness of a check, providers should consider roles and responsibilities of the job taking into account whether the person is working in SVGA regulated activities.

It is an offence to permit or supply a person to engage in regulated activity from which they are barred if the employer or supplier knows or has reason to believe that the person is barred. CQC will take action if providers are knowingly employing a person who is known or believed to be barred.

**22. Are retrospective checks needed for staff who have been employed for a long period without having a check and who fall within the criteria for a DBS check?**

As above, the onus is on the provider to ensure they have robust recruitment procedures and systems in place so they are assured their staff are fit to practise. The changes to DBS arrangements do not put in place any new requirements in relation to periodic or retrospective checks. As always, the decision about checks should be based on risk and made at a local level.

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**23. Do providers have to get a criminal record check on staff recruited from abroad?**

Registered providers are expected to apply the same process for staff recruited from abroad as they would for other staff.

Employers must do all they can to ensure that people they appoint from overseas are suitable to work with adults who use care services and/or children. The DBS cannot access criminal records held overseas. However, it is still recommended that employers undertake DBS checks in case a person is barred, has a criminal record in the UK, or comes from a country where the DBS does have information sharing arrangements.

If a provider is recruiting people from overseas and wishes to check their overseas criminal record, they need to contact the relevant foreign embassy. There is more detail on the [DBS section](#) of the 'gov.uk' website.

It is important that employers check thoroughly that overseas job applicants have the necessary permits to work in a UK care setting. Employers may be breaking the law if they do not make sure that workers from overseas have all the right documents. There is information about this at the [UK Border Agency's website](#).

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**24. How does CQC check if DBS checks have been carried out?**

Our inspectors check compliance with Regulation 21 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2012. This includes checks that providers and managers of registered establishments and agencies have made the appropriate DBS and other checks when:

- recruiting staff and other workers, or
- moving staff to new jobs that require DBS checks or
- when staff are undertaking a regulated activity under the SVGA 2006.

They do this by selecting a sample of staff records to inspect, to confirm that appropriate checks have taken place.

Providers do not need to retain original DBS certificates for the purposes of inspection. CQC has an agreement that for social care services, the top third of the DBS certificate can be retained for 12 months or until inspectors have seen them. Keeping this part of the certificate is for evidence that a certificate has been obtained. They must be destroyed after we have seen them. However, it should only be retained if it does not include details of offences. (In exceptional circumstances where a large number of offences are listed, these may continue onto the reverse of the top third section; in these circumstances the top third should not be retained once the recruitment decision has been made.)

From 17 June 2013, the certificate is only sent to the applicant. We will continue to look at the top third of certificates where they are available. We will not expect to see hard copies of a single certificate, but will want to see records kept by the provider.

Providers will need to ask a person to see their certificate and record, and to keep the relevant details as listed below:

- The date of issue of the check.
- The full name and date of birth of the subject.
- The type of check requested.
- Whether the children's and/or adults barred list was checked and the outcome.
- The position for which the check was requested.
- The unique reference number of the check.
- The details of the employment decision taken, and
- Any additional information that may require periodic checks to be made.

If, following risk assessment, a decision is taken not to apply for a DBS check, then the reason why should also be recorded.

Although we would not routinely expect to see hard copies of certificates, we have the power to use our discretion to ask for any relevant documents where we have concerns. This may include the DBS certificate. Decisions on whether it is necessary to see the actual DBS certificate should be made on a case-by-case basis. The decision should be based on whether it is necessary for us to carry out our functions, and our inspectors /assessors should follow the 'necessity test' in the Code of Practice on Confidential Personal Information when making a decision.

Other staff records are also required to demonstrate compliance with schedule 3 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 – see the schedule for details.

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**25. Do DBS checks have to be renewed?**

There is no requirement for a service that directly employs its own staff to repeat DBS checks within a set period. For example, there is no blanket rule such as re-checking all employees every three years. However, employers can re-check their staff whenever they think it is necessary. Any additional checks should be proportionate to risk.

Further checks on staff depend on whether the registered person judges that this is necessary or advisable after a certain period. When making their decision they should undertake a risk assessment taking into account the work staff do, the potential scope for abuse, and the stability of the workforce.

Agencies supplying temporary staff to health and social care services may wish to carry out a DBS check on their staff every 12 months. Work placements can accept this rather than having to do their own checks, but they must get written confirmation from the agency that a satisfactory check has been received (see question 26 below).

Please check updates on the DBS website about the introduction of the Update Service which is expected on 17 June 2013. The intention is to reduce the number of new applications required.

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**26. Are providers responsible for making sure that staff supplied from an agency have had a DBS check?**

Yes. Providers must obtain and keep written confirmation from an employment agency that eligible members of staff that are supplied to them have had a satisfactory DBS check at the right level for their role.

As the provider is ultimately responsible for the safety and wellbeing of people in their care, it is their responsibility to make sure that the legal requirements and robust and effective arrangements for recruiting staff are satisfied.

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**27. What arrangements are in place for people employed by NHS Professionals (the NHS in-house staff agency)?**

The NHS in-house staff agency (NHS Professionals) has special arrangements with the DBS. If an existing NHS employee registers with NHS Professionals, or joins the bank staff scheme of the NHS organisation that employs them, the employer does not have to obtain new a DBS check where these have already been carried out by the substantive NHS employer.

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However, if a person leaves the NHS and breaks their service, and then applies to the trust's bank or NHS Professionals, we expect a new DBS check at the right level to be applied for.

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**28. Do students on placement need to have DBS checks?**

Students over 18 years of age undertaking vocational placements in health or social care settings are likely to be eligible for an enhanced and barred list check. Whatever the level of check the student is eligible for, we expect providers to undertake them following a risk assessment. Providers should risk-assess the roles and responsibilities to determine which checks are appropriate and to what level. We would expect providers to be able to show that they have undertaken this risk assessment, especially if they have decided not to undertake a check.

The check may be obtained by the educational establishment at the start of the course, but the health or social care provider should obtain written confirmation of this. We expect written confirmation to state which level of check the student has had and whether or not it is satisfactory. Providers are ultimately responsible for the safety and wellbeing of people in their care and should assure themselves that the checks are satisfactory and the person is not barred.

See our guidance on [DBS checks and work placements](#) in adult social care settings.

The minimum age at which someone can apply for a DBS check is 16. However, to safeguard people using their services, we expect providers to undertake a risk assessment before taking anyone under the age of 16 on work experience. The assessment should carefully consider what roles and tasks would be appropriate for them and what level of supervision would be required.

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**29. What arrangements are in place for NHS doctors in training?**

Special arrangements in the NHS Employment Check standards allow for DBS checks to be undertaken once every three years for doctors on educationally-approved training rotations. This would only be where there is evidence of a satisfactory DBS check obtained by an NHS employing organisation in the previous three years and where the new post does not change the level of check required (for example a paediatric post that requires a check against the Children's Barred list). Please see the [NHS Employers website](#) for more details.

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**30. What happens if the DBS has any queries about an application?**

The DBS will contact the counter signatory directly (normally by letter). The counter signatory or another member of staff acting on their behalf will then contact the applicant to explain the problem and try to resolve the query.

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**31. Can DBS checks be used for more than one job application? (this is sometimes referred to as portability)**

Depending on their role and activities, new entrants to the workforce in services regulated by CQC are expected to obtain a new DBS check where eligible.

People taking up a new position who are currently working in services regulated by CQC can satisfy the expectation that they will have an appropriate DBS check if they can provide evidence of a check, at the right level for their role, that is less than three months old at the point of application.

People supplied by an employment agency can satisfy the expectation that they will have an appropriate DBS check if they can provide evidence of a check, at the right level for their role, that is less than 12 months old.

The portability section of the [DBS page](#) on the gov.uk website describes some of the risks and limitations of portability.

Where people take up a new role or go to a new location but stay with the same employer with no break in service, a new DBS check is not necessary provided that a check has previously been obtained at the appropriate level. Some examples where this applies include:

- A care assistant employed by a large corporate provider moves from working in care home A to care home B.
- A consultant with practising privileges who has been checked to work in independent hospital A also starts working in hospital B, which is part of the same group of hospitals owned by the organisation running hospital A.

The DBS will launch the Update Service on 17 June 2013. The Update Service will allow the applicant (the person who the check is about) to apply for a DBS check only once and then, if they subsequently need a further check of the same type, to use their existing certificate. To do this, the applicant would have to subscribe to the Update Service and pay an annual subscription fee. The organisation employing them would, with the person's consent, be able to check online to see if the information on their certificate was still up to date. The intention is to avoid many repeat applications. See the [DBS section](#) of the gov.uk website for further details.

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**32. Is there more CQC information about criminal record checks?**

There are some frequently asked questions (FAQs) available on our [website](#).

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## Links to further information

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[CQC website](#)

[Post Office](#)

[UK Border Agency](#)

[NHS Employers](#)

[DBS](#)

[CQC FAQs](#)

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## Appendix A: Legislative changes introduced on 10 September 2012 that affect the Disclosure and Barring Service

The Protection of Freedoms Act 2012 amended the Safeguarding Vulnerable Groups Act 2006. There have been subsequent changes to the Police Act 1997 and regulations made under that Act, and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 on which the disclosure and barring service is based.

The changes introduced by the Protection of Freedoms Act 2012 include:

- A new definition of regulated activity.
- The provision of statutory guidance on the supervision in relation to working with children.
- The introduction of a minimum age at which someone can apply for a DBS check and apply to become a counter signatory.
- Repeal of registration and monitoring.
- Repeal of additional ('brown envelope') information.
- Repeal of controlled activity.
- A more rigorous relevancy test for the police when they release locally held information through an enhanced check.
- A new right of review for applicants of information released by the police.
- People who do not fall within the new definition of regulated activity (from 10 September 2012) but are within the pre-September definition of regulated activity will remain eligible for enhanced checks without barred list information.

The changes brought in by the Act also affect the work carried out by the Independent Safeguarding Authority (ISA) which, from 1 December 2012, will be replaced by the Disclosure and Barring Service (DBS). Specific changes are:

- Most people will be barred from working with children and/or adults only if they have engaged, are engaging or might in the future engage in roles which fall within the new definition of regulated activity.
- They will have greater powers to review a person's inclusion on a barred list.

## Appendix B: Regulated activity – adults

**The Protection of Freedoms Act 2012 amended the definition of regulated activity relating to adults from 10 September 2012.**

### What has changed?

- The new definition no longer refers to the word ‘vulnerable’ for regulated activity relating to adults.
- Regulated activity is not defined in relation to specified establishments (for example, a care home). Instead, the focus is on the type of activities needed by the adult, not where the activity takes place.
- The frequency test has been removed – an individual only needs to engage in the activities listed below once to be carrying out regulated activity relating to adults.

The regulated activity definition applies to the following activities:

- Healthcare provided to adults by, or under the direction or supervision of, a regulated health care professional,
- Personal care for adults involving hands-on physical assistance with washing and dressing, eating, drinking and toileting; prompting and supervising an adult with any of these tasks because of their age, illness or disability; or teaching someone to do one of these tasks.
- Social work – provision by a social care worker of social work that is required in connection with any health services or social services.
- Assistance with an adult’s cash, bills or shopping because of their age, illness or disability arranged through a third party.
- Assisting in the conduct of an adult’s own affairs under a formal appointment.
- Conveying adults on behalf of an organisation/third party for reasons of the adults’ age, illness or disability to or from a place where they receive healthcare, personal care or social work.

### What is not changing?

- An adult is defined as a person aged 18 years or over.
- A person whose role includes the day-to-day management or supervision of any person engaging in regulated activity, is also in regulated activity.
- Regulated activity relating to adults excludes any activity carried out in the course of family relationships, and personal, non-commercial relationships.

The definition of regulated activity relating to adults is detailed in [Schedule 4 to the Safeguarding Vulnerable Groups Act 2006](#) and the Department of Health has produced an accompanying [note](#).

DBS Factsheets on Summary of Regulated Activity relating to adults will be published on the DBS web pages ([www.gov.uk/dbs](http://www.gov.uk/dbs)) in late June 2013.

## Appendix C: Regulated activity - children

**The Protection of Freedoms Act 2012 amends the definition of regulated activity relating to children from 10 September.**

The new definition of **regulated activity** relating to children applies to individuals undertaking the following:

- Registered childminders.
- Registered foster carers.
- The day-to-day management or supervision of any person engaging in regulated activity. This also applies to someone who would be in regulated activity but for the consideration of supervision.

### **Unsupervised activities**

These activities are teaching, training, instructing, caring for or supervising children or providing advice/guidance on wellbeing or driving a vehicle solely for children.

Supervision means day-to-day supervision as is reasonable in all the circumstances for the purpose of protecting any children concerned.

The Department for Education has produced [statutory guidance on supervision](#) to describe the considerations an organisation should make when determining whether or not an individual is supervised to a reasonable level for the role.

### **Work for a limited range of establishments (specified places)**

These establishments are as detailed in the page in this section [Establishments for regulated activity relating to children](#) with the opportunity for contact with children, including schools and children's homes.

Work carried out by volunteers supervised to a reasonable level, in accordance with the statutory guidance on supervision, in these establishments is not regulated activity. However, a supervised paid employee working for a specified establishment does come under regulated activity.

Work carried out involving either an unsupervised activity or in one of the listed establishments is only regulated activity relating to children if done frequently or intensively.

Frequently or intensively means carried out by the same person frequently (once a week or more often), or on four 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).

**Health care**

Health care for children provided by, or under the direction or supervision of, a regulated health care professional.

This is regulated activity even if the activity is only carried out once.

**Personal care**

Personal care for children involving hands-on physical assistance with washing and dressing, eating, drinking and toileting; prompting and supervising a child with any of these tasks because of their age, illness or disability; or teaching someone to do one of these tasks.

This is regulated activity even if the activity is only carried out once.

The revised definition of regulated activity can be found in Part V of the Protection of Freedoms Act 2012.

DBS Factsheets on Summary of Regulated Activity relating to children will be published on the DBS web pages ([www.gov.uk/dbs](http://www.gov.uk/dbs)) in late June 2013.