

Disclosure and Barring Service guidance

For children's social care establishments, agencies, residential holiday schemes for disabled children and local authority fostering and adoption services

This guidance covers: adoption support agencies, children's homes (including secure children's homes), residential family centres, residential holiday schemes for disabled children, voluntary adoption agencies, independent fostering agencies, and local authority adoption and fostering services.

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Introduction

1. This guidance explains how Ofsted's inspectors will evaluate providers' and managers' administration and use of the Disclosure and Barring Service (DBS) checks and certificates. It includes information about online status checks. The guidance takes immediate effect from date of publication.
2. The guidance relates to the following types of children's social care services:
 - adoption support agencies
 - children's homes, including secure children's homes
 - independent fostering agencies
 - residential family centres
 - residential holiday schemes for disabled children
 - voluntary adoption agencies¹
 - local authority adoption and fostering services.²
3. DBS certificates provide information about a person's criminal record history at a point in time and may contain information about their suitability to work with children. Information in certificates must always be considered alongside other relevant information to determine a person's suitability to work with children.
4. The DBS offers a voluntary update service that allows a person's status to be checked online. This removes the need for multiple checks. Further information on the update service can be found in paragraphs 12 to 14.
5. All staff and volunteers of the services listed in paragraph 2 may be eligible for a DBS check, depending on the nature of the work they undertake. Eligibility for DBS certificates is determined in accordance with the Police Act 1997.³
6. Employers must understand whether the work a person undertakes, or will undertake, makes them eligible for a DBS check.

¹ Voluntary adoption agencies only have a registered provider. The law does not require a manager to register.

² While only local authority fostering and adoption services are covered by regulations, it is good practice that this guidance is followed by local authorities in relation to how they manage DBS checks for all of their staff.

³ www.legislation.gov.uk/ukpga/1997/50/contents.

Types of certificate

7. There are three types of certificate that can be issued:
- **Standard:** this provides information about a person's criminal record and includes convictions and cautions, which are not protected convictions or cautions.⁴ To be eligible for a standard certificate, the position must be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975.
 - **Enhanced:** this is only available in prescribed circumstances.⁵ It provides the same information as a standard certificate but may contain information held by the local police that is considered to be reasonably relevant and in their opinion, ought to be included. To be eligible for an enhanced certificate, the position must be included in both the ROA 1974 Exceptions Order 1975 and in the Police Act 1997 (Criminal Records) Regulations 2002.
 - **Enhanced with suitability information (known on the DBS website as 'enhanced with list checks'):** in certain circumstances an enhanced criminal record certificate automatically includes information about whether a person is barred from engaging in regulated activity (barring information) and prohibited from working in an establishment or an agency. To be eligible for a check of the children's barred list, the position must be eligible for an enhanced certificate as set out above and be specifically listed in the Police Act 1997 (Criminal Records) (No 2) Regulations 2009. A DBS certificate only provides barring information in the prescribed cases; these are set out in regulation 5C of the Police Act 1997 (Criminal Records) Regulations 2009.
8. A person who is included in the children's barred list commits an offence, under the 'Safeguarding Vulnerable Groups Act 2006', if they engage in regulated activity from which they are barred. This includes providing, or working in, a service as listed in paragraph 2.
9. A provider commits an offence if they knowingly permit a person who is included on the children's barred list to engage in regulated activity. Providers

⁴ Convictions and cautions are defined in article 2A of the 1975 Order. The DBS website states 'All cautions and convictions for specified serious violent and sexual offences, and other specified offences of relevance for posts concerned with safeguarding children and vulnerable adults, will remain subject to disclosure. In addition, all convictions resulting in a custodial sentence, whether or not suspended, will remain subject to disclosure, as will all convictions where an individual has more than one conviction recorded.' For more information on which cautions must be disclosed see: 'DBS filtering guide'; www.gov.uk/government/publications/dbs-filtering-guidance.

⁵ An enhanced certificate may only be obtained for prescribed purposes as set out in regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002 (set out in full in Annex A). In addition, standard and enhanced DBS certificates may only be obtained where required for the purposes of asking an exempted question within the meaning of the Rehabilitation of Offenders Act 1974.

and managers must fully investigate any information, which indicates that a person may be barred from working with children.

10. Providers and managers should ensure that they keep up-to-date with what does and does not constitute regulated activity.⁶ Changes to the work that a member of staff or volunteer undertakes may require them to obtain a DBS certificate where previously this was unnecessary. A change to the nature of the work a person undertakes may also require a different type of DBS check (see paragraphs 7 to 9) in order for the person to undertake that work. In these cases, the new type of DBS check and certificate should be obtained before the person commences that work. For example, where the work of a member of the administration team changes to include working directly with children, the provider/manager must consider whether there is a change in DBS requirements.

The update service

11. From 1 July 2013, the DBS implemented a subscription service called the DBS update service.⁷ By subscribing to this service, a person can provide their current or new employer with the ability to continually check the status of their existing certificate. The person must pay an annual fee for the subscription.⁸
12. The providers listed in paragraph 2 can use the online checking service, with the agreement of the person who obtained the DBS certificate, to carry out an instant online status check.⁹ This status check shows if any new information is available since the certificate was issued. The update will either state that there is no new information, or that new information is available but it will not include the specific detail; a new DBS certificate must be obtained.

⁶ Regulated activities are defined for these purposes by the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012.

⁷ DBS update service: www.gov.uk/dbs-update-service.

⁸ At the time of issue of this guidance this cost £13 per annum.

⁹ Guidance for providers on when they can ask for a DBS certificate: www.gov.uk/disclosure-barring-service-check/arranging-checks-as-an-employer.

13. The following must be in place before a provider or manager can undertake online status checks on their potential employees, employees or volunteers.
 - The individual member of staff/volunteer must have subscribed to the DBS update service.
 - The provider must have the individual member of staff/volunteer's consent to check their DBS status online.
 - The provider or manager must have taken action to ensure that they can comply with the DBS code of practice.¹⁰

What a children's social care provider or manager must do

14. Under the Care Standards Act 2000,¹¹ everyone who works at an establishment or residential holiday scheme for disabled children, or for the purposes of an agency or local authority fostering and adoption service, must be 'fit' to do so.
15. A provider or manager must review the information contained in an up-to-date DBS certificate and decide whether this reveals any concerns about the person's suitability to work with children. The review must take place before the person is engaged in work at any of the services listed in paragraph 2. Where there are concerns, the provider or manager must demonstrate how they have used the information to come to their conclusion about whether or not to engage the person.
16. A person who works at the services listed in paragraph 2 must also continue to meet the regulatory requirements under the Care Standards Act 2000 after the initial recruitment process. The relevant regulations are set out in Annex B. Where there are concerns, inspectors will evaluate how a provider or manager has re-checked a person's suitability to work with children. Where appropriate, this must include how they have re-checked a person's criminal record history by requesting the person to apply for another DBS check and showing them the certificate once obtained.
17. The DBS advises providers or managers to have a policy that outlines how they will manage checks and certificates.¹² A policy on obtaining DBS checks and certificates should support verification that those who work with children and young people are suitable on recruitment and remain suitable. For example, it is good practice to clarify when a person's online DBS status will be checked (see paragraphs 11 to 13), when to re-check those who do not subscribe to the online checking service and what records will be kept about checks and certificates.

¹⁰ DBS code of practice; www.gov.uk/government/publications/dbs-code-of-practice.

¹¹ Care Standards Act 2000; www.legislation.gov.uk/ukpga/2000/14/contents.

¹² DBS guidance for employers: www.gov.uk/dbs-check-requests-guidance-for-employers.

18. Inspectors will consider how safely a provider or manager manages DBS checks and certificates as part of their assessment of a provider's recruitment and retention of anyone engaged to work at an establishment or for an agency.

Action a provider or manager must take if concerned about a person's suitability to work with children

19. A new DBS certificate should be obtained if:
- a person's online status check shows that there is a change to his or her status
 - there are concerns that a person, who does not subscribe to the update service, may have an undisclosed conviction or caution.
20. In the circumstances outlined in paragraph 19, providers or managers must:
- take immediate action to ensure that the person poses no risk, and will continue to pose no risk, to children and young people
 - ask the person to obtain a new DBS certificate without delay
 - notify Ofsted if it is clear that there is a serious complaint about the person working at a registered establishment or agency, as required by regulations made under the Care Standards Act 2000.

Students on work placements and volunteers

21. All social care providers and managers must examine an enhanced DBS certificate for any student or volunteer over the age of 16 who will engage in regulated activity relating to children and young people.

Agency staff

22. Providers and managers are responsible for ensuring that staff, including agency staff, who work at their establishment or for their agency/service, are safely recruited and that appropriate checks are carried out. A provider or manager must be able to demonstrate that they have checked any member of staff from an agency meets the relevant recruitment regulatory requirements for establishments, agencies, local authority fostering and adoption services, and residential holiday schemes for disabled children. This includes seeing a current DBS certificate for the person.¹³

¹³ See Annex B for detail of the regulations which apply to each type of establishment, agency, residential holiday scheme for disabled, or local authority fostering and adoption service.

Changes to the legislative framework relating to DBS certificates

23. **Administrative and auxiliary staff:** on 30 June 2014, the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 was amended.¹⁴ Auxiliary and administration staff are now eligible for a standard DBS check if they are:
- working at a children’s home or a residential family centre
or
 - employed or undertaking work for the purposes of a local authority adoption or fostering service, an independent fostering agency, voluntary adoption agency or adoption support agency, where in the course of their normal duties they have access to personal or sensitive information about children.
24. Providers and managers of the services listed in paragraph 23 must ensure that they see a suitable, standard DBS certificate for all auxiliary and administration staff they intend to employ. They must also ensure that all auxiliary and administration staff they employ obtain a standard DBS certificate, if no Criminal Records Bureau (CRB) certificate or DBS certificate has previously been obtained. Ofsted expects providers and managers to ensure this.
25. The 2014 Amendment Order however, **does not apply** to auxiliary and administration staff working for a **residential holiday scheme for disabled children**. Such staff will not be eligible for standard DBS check unless they also undertake work that falls within the definition of regulated activity. If they do, a DBS certificate must be obtained.
26. **Fostering and adoption panel members** can only obtain either a standard or enhanced DBS certificate if their work does not include direct work with children and young people. However, if a panel member undertakes work, which falls within the definition of regulated activity, he or she will be able to apply for an enhanced certificate with suitability information – see paragraph 7 for definitions of the types of DBS check available. It is therefore essential that proposed panel members remember to request the correct type of DBS check.
27. **Non-resident partners of foster carers** do not fall within the definition of regulated activity. They are therefore not eligible to apply for a DBS check. However, Ofsted expects all local authority fostering services and independent fostering agency providers and managers to ensure that children and young people who are fostered are safe in their foster homes. Providers and managers must show that they have an effective policy to monitor foster carer relationships and to guide foster carers on how to manage non-resident

¹⁴ The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2014; www.legislation.gov.uk/ukxi/2014/1707/introduction/made.

partners' access and responsibilities for the children and young people they foster.

Annex A – Regulations which are relevant to deciding whether a person undertakes work which satisfies the criteria for Enhanced criminal records certificates and barring information

Police Act 1997 (Criminal Records) Regulations 2002

[5A Enhanced criminal record certificates: prescribed purposes]

[The purposes for which an enhanced criminal record certificate may be required in accordance with a statement made by a registered person under section 113B (2)(b) of the Act are prescribed as follows, namely the purposes of—

[(a) considering the applicant's suitability in the circumstances set out in regulation 5C;]

[(aa) . . .]

[(b) considering the applicant's suitability in the circumstances set out in regulation 5B;]

[(ba) . . .] and [(bb) . . .]

[(c) obtaining or holding an operating licence under Part 5 of the Gambling Act 2005 for the purposes of that Act;

(d) obtaining or holding a personal licence under Part 6 of the Gambling Act 2005 for the purposes of that Act;

(e) considering an individual's suitability for a position as Commissioner for the Gambling Commission and for any office or employment in the Commissioners' service;]

(f) obtaining or holding a licence under section 5 or 6 of the National Lottery etc Act 1993 (running or promoting lotteries);

[(g) . . .to (u) . . .

(v) . . . considering the suitability of any person appointed by the Commissioner [for Older People in Wales] to assist him in the discharge of his functions or authorised to discharge his functions on his behalf;

(w) . . .]

[(x) considering the applicant's suitability for work as a person who provides immigration advice or services as defined in section 82(1) of the Immigration and Asylum Act 1999 and is--

(i) a registered person under Part 5 of that Act, or

- (ii) a person who acts on behalf of and under the supervision of such a registered person, or
- (iii) a person who is exempt by section 84(4)(a) to (c) of that Act;
- (y) considering the applicant's suitability to obtain or retain a licence under regulation 5 of the Misuse of Drugs Regulations 2001 or under Article 3(2) of Regulation 2004/273/EC or under Article 6(1) of Regulation 2005/111/EC where the question relates to any person who as a result of his role in the body concerned is required to be named in the application for such a licence (or would have been so required if that person had had that role at the time the application was made); . . .
- (z) . . .] to [(zc) . . .]
- [(zd) considering an individual's suitability to have in their possession, to acquire or to transfer, prohibited weapons or ammunition to which section 5 of the Firearms Act 1968 applies][;
- (ze) assessing the suitability of a person for any office or employment which relates to national security]
- (zf) considering the applicant's suitability to obtain or hold a taxi driver licence.

Police Act 1997 (Criminal Records) Regulations 2002

[5C Definition of "work with children"]

The circumstances referred to in regulation 5A(a) are

- (a) considering the applicant's suitability to engage in any activity which is a regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012;
- (b) considering the applicant's suitability to engage in any activity which is a regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;
- (c) a decision made by an adoption agency within the meaning of section 2 of the Adoption and Children Act 2002, or the compiling of a report for the authority making a decision in respect of an application to be a special guardian within the meaning of section 14A of the Children Act 1989, as to a person's suitability to adopt a child or be a special guardian, including obtaining information in respect of any person aged 18 years or over living in the same household as the prospective adopter or special guardian;

- (d) registration for child minding or providing day care under Part 2 of the Children and Families (Wales) Measure 2010, including assessing the suitability of any person to have regular contact with a child who is--
 - (i) aged 16 or over and living on the premises at which the child minding or day care is being or is to be provided;
 - (ii) aged 16 or over and working, or who will be working, on the premises at which the child minding or day care is being or is to be provided at times when such child minding or day care is being or is to be provided;
- (e) registration under Chapters 2, 3 or 4 of Part 3 of the Childcare Act 2006 (regulation of provision of childcare in England), including assessing the suitability of any person to have regular contact with a child who is--
 - (i) aged 16 or over and living on the premises at which the childcare is being or is to be provided;
 - (ii) aged 16 or over and working on the premises at which the childcare is being or is to be provided at times when such childcare is being or is to be provided;
- (f) placing children with foster parents in accordance with any provision of, or made by virtue of, the Children Act 1989 or the Children (Northern Ireland) Order 1995 or the exercise of any duty under or by virtue of section 67 of that Act or Article 108 of that Order (welfare of privately fostered children), including obtaining information in respect of any person who is--
 - (i) aged 18 or over and living in the same household as a person who is, or who wishes to be approved as, a foster parent within the meaning of section 53(7)(a) or (b) of the Safeguarding Vulnerable Groups Act 2006;
 - (ii) aged 16 or over and living in the same household as a person who fosters, or intends to foster, a child privately within the meaning of section 66(1) of the Children Act 1989 or who is otherwise a private foster parent within the meaning of section 53(7)(c) and (8) of the Safeguarding Vulnerable Groups Act 2006;
- (g) obtaining information in respect of any person who is aged 16 or over and who lives in the same household as an individual who is having or who has had their suitability assessed for the purposes of--
 - (i) engaging in any activity which is regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 or as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012;
 - (ii) working in a further education institution (within the meaning of section 140 of the Education Act 2002) where the normal duties of that work involve regular contact with children; or

- (iii) working in a 16 to 19 Academy (within the meaning of section 1B of the Academies Act 2010) where the normal duties of that work involve regular contact with children:

where that individual, and the person who lives in the same household, live on the premises where that activity or work would normally take place;

- (h)
- (i) work done infrequently which, if done frequently, would be regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 or as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012;
- (j) registration under Part II of the Care Standards Act 2000 (establishments and agencies);
- (k) registration under Part IV of the Care Standards Act 2000 (social care workers);
- (l) considering the applicant's suitability for work in a further education institution (within the meaning of section 140 of the Education Act 2002) or a 16 to 19 Academy (within the meaning of section 1B of the Academies Act 2010) where the normal duties of that work involve regular contact with persons aged under 18.]

Police Act 1997 (Criminal Records) (No 2) Regulations 2009

5. Suitability information relating to children

[Cases in which an application for an enhanced criminal records certificate is made for the purposes of--

- (a) considering the applicant's suitability to engage in any activity which is a regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;
- (b) assessing the suitability of a person to have regular contact with children who is aged 16 or over and who lives in the same household as an individual who is having or who has had their suitability assessed for the purposes of engaging in a regulated activity relating to children, where that individual, and the person who lives in the same household, live on the premises where that regulated activity would normally take place;
- (c) considering the suitability of a person for the purposes of registration for childcare, including assessing the suitability of a person to have regular contact with children who is--
- (d) aged 16 or over and living on the premises at which childcare is being or is to be provided;

- (i) aged 16 or over and working, or who will be working, on the premises at which childcare is being or is to be provided at times when such childcare is being provided or is to be provided;
 - (ii) where that childcare is the provision of child-minding or day care within the meaning of section 19 of the Children and Families (Wales) Measure 2010 or the provision of childcare within the meaning of section 18 of the Childcare Act 2006;
- (e) placing children with foster parents in accordance with any provision of, or made by virtue of, the Children Act 1989 or the Children (Northern Ireland) Order 1995 or the exercise of any duty under or by virtue of section 67 of that Act or Article 108 of that Order (welfare of privately fostered children) including obtaining information in respect of any person who is:
- (i) aged 16 or over and living in the same household as a person who is, or who wishes to be approved as, a foster parent within the meaning of section 53(7)(a) or (b) of the Safeguarding Vulnerable Groups Act 2006;
 - (ii) aged 16 or over and living in the same household as a person who fosters, or intends to foster, a child privately within the meaning of section 66(1) of the Children Act 1989 or who is otherwise a private foster parent within the meaning of section 53(7)(c) of the Safeguarding Vulnerable Groups Act 2006;
- (f) a decision made by an adoption agency within the meaning of section 2 of the Adoption and Children Act 2002, or the compiling of a report for an authority making a decision in respect of an application to be a special guardian within the meaning of section 14A of the Children Act 1989, as to a person's suitability to adopt a child or be a special guardian, including obtaining information in respect of any person aged 18 years or over living in the same household as the prospective adopter or special guardian;]
- (g) considering the applicant's suitability for any office or employment or other work in the Criminal Records Bureau;
- (h) considering the applicant's suitability to obtain or hold a licence under section 46 of the Town Police Clauses Act 1847; section 8 of the Metropolitan Public Carriage Act 1869; section 9 of the Plymouth City Council Act 1975; section 51 of the Local Government (Miscellaneous Provisions) Act 1976; or section 13 of the Private Hire Vehicles (London) Act 1998; are prescribed for the purposes of section 113BA of the Police Act 1997.

Annex B – List of regulations relating to the employment of a person to work for the purposes of an agency, establishment or holiday scheme for disabled children

1. **Adoption support agencies** – Regulation 19 of The Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005¹⁵
2. **Children’s homes** – Regulation 32 of The Children’s Homes (England) Regulations 2015¹⁶
3. **Independent fostering agencies** – Regulation 20 of The Fostering Services (England) Regulations 2011¹⁷
4. **Residential family Centres** – Regulation 16 of The Residential Family Centres Regulations 2002¹⁸
5. **Residential holiday schemes for disabled children** – Regulation 22 of The Residential Holiday Schemes for Disabled Children (England) Regulations 2013¹⁹
6. **Voluntary adoption agencies** – Regulation 14 of The Voluntary Adoption Agencies and the Adoption Agencies (Miscellaneous Amendments) Regulations 2003²⁰

¹⁵ www.legislation.gov.uk/uksi/2005/2720/regulation/19/made

¹⁶ www.legislation.gov.uk/uksi/2015/541/regulation/32/made

¹⁷ www.legislation.gov.uk/uksi/2011/581/regulation/20/made

¹⁸ www.legislation.gov.uk/uksi/2002/3213/regulation/16/made

¹⁹ www.legislation.gov.uk/uksi/2013/1394/regulation/22/made

²⁰ www.legislation.gov.uk/uksi/2003/367/regulation/14/made