

YOUNG SOLUTIONS

DETERMINING DBS ELIGIBILITY – Last Updated Feb 2021

If you are considering asking a person to apply for a standard or enhanced DBS check, as an employer, you are legally responsible for making sure the job role is eligible.

This document contains information about the different types of DBS check and links to further documents and legislation. These will help you identify the level of DBS check required, whether the position you are recruiting for falls into the child and/or adult workforce and where you can legally request access to a check of the children's and/or adults' barred list.

It is important to make sure that the law allows a DBS application to be submitted. As an employer or regulator, but also as a registered body, you have a legal responsibility for making sure you can submit applications and must know the legislation that supports each application in case DBS need further clarification.

Disclaimer: This is not legal advice. If you need help with making sure you are complying with the law, you should speak to a legal advisor.

Type of DBS Check

Basic - Basic DBS checks will disclose details of any unspent convictions and conditional cautions. Anyone can apply for a Basic DBS check themselves via the DBS website. There is no eligibility criteria that needs to be met for a Basic Check.

Standard - Standard DBS checks will disclose details of spent and unspent convictions, cautions, final warnings and reprimands, subject to filtering.

The position **must** be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975.

Individuals can't apply for their own Standard check, only an employer or recruiter can apply via an organisation registered with DBS (known as a Registered Body).

Enhanced - Enhanced DBS checks will disclose the same information as a Standard check but can also include non-conviction information that the police believe is relevant to the workforce applied for and ought to be disclosed.

The position **must** be included in both the ROA Exceptions Order **and** in the Police Act 1997 (Criminal Records) regulations.

Enhanced DBS checks should only be applied for if a role meets the definition of 'work with children' (the child workforce), 'work with adults' (the adult workforce) or falls into the 'other workforce'.

Only an employer or recruiter can apply for an Enhanced DBS check, via an organisation registered with DBS (known as a Registered Body).

Enhanced with Barred List Check - Enhanced DBS checks with Children's and/or Adults' Barred List checks will disclose the same information as an Enhanced DBS check and include a check of the Children's Barred List, the Adults' Barred List, or both depending on which group the individual is working with and whether the role is eligible.

The position **must** be eligible for an enhanced level DBS certificate as above **and** be specifically included in the Police Act 1997 (Criminal Records) regulations as able to check the appropriate barred list(s).

Only an employer or recruiter can apply via an organisation registered with DBS (known as a Registered Body).

Note 1) DBS remove certain specified old and minor offences from DBS certificates in line with legislation introduced in May 2013.

Note 2) The Workforce type is entered on entered into line X61 on the DBS form

Choosing the Right Type of Check and Workforce

The laws mentioned above only provide eligibility for DBS checks, they do not make them a requirement.

Decisions on when and whether to undertake a DBS check are for the relevant employer or regulator to make based on what the law allows. It is not discretionary as such, but a matter of considering the nature of the activities undertaken and if they are eligible for DBS checks. DBS provides an **electronic eligibility tool** which can help you with this.

The DBS **Child Workforce Guide** and **Adult Workforce Guide** will be useful in helping you identify the types of work eligible for an enhanced DBS check in each workforces, including regulated activity (links below).

Also see the DBS documents **DBS Checks: Working with Children in the Charity Sector** and **DBS Checks: Working with Adults in the Charity Sector**

The Police Act 1997 (Criminal Records) (Amendment) Regulations 2013/1194 (the legislative definition of work with children and/or adults), the Department for Education (DfE) factual note on regulated activity with children and the Department of Health (DH) factual note on the definition of regulated activity with adults will also help.

You can access the various Police Act 1997 (Criminal Records) regulations by searching for them on www.legislation.gov.uk. This will not provide a list of job roles – such a list does not exist. Instead each regulation can be opened to identify what roles, duties or activities have been included from the date that the regulation was brought in. The regulations can also remove roles, duties or activities.

Regulated Activity

When you request a DBS certificate to assess someone to carry out regulated activity with children/ adults this means that you are a regulated activity provider (RAP). This brings obligations under the Safeguarding Vulnerable Groups Act 2006.

As a RAP, you have a legal duty to refer an individual to DBS when you believe a person has caused harm or poses a future risk of harm to vulnerable groups, including children. You must also provide information to DBS when we ask you to and may be fined unless you have a reasonable excuse for not providing the information. The conditions you must consider before making a referral or providing information to us can be found on the DBS website.

An employer or volunteer manager is breaking the law if they knowingly employ someone in a regulated activity with a group from which they are barred from working.

A barred person is breaking the law if they seek, offer or engage in regulated activity with a group from which they are barred from working.

Useful Links:

Webpage / Document	Link
DBS eligibility tool	www.gov.uk/find-out-dbs-check
DBS Child Workforce guide	https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/804668/Child_workforce_guide_v10_0_28052019.pdf
DBS Adult Workforce guide	https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/735504/Adult_workforce_guide_v10_0_030818.pdf
DBS Other Workforce guide	https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/735506/Other_workforce_guide_v8_0_030818.pdf
DBS Checks: Working with Children in the Charity Sector	https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/789061/ENGLISH_-_CCS156_CCS0219642870-001_Charity_Roles_Children_Web.pdf
DBS Checks: Working with Adults in the Charity Sector	https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/789060/ENGLISH_-_CCS156_CCS0219642870-002_Charity_Roles_Adults_Web.pdf
Police Act 1997 (Criminal Records) (Amendment) Regulations 2013/1194	www.legislation.gov.uk/ukxi/2013/1194/made
Department for Education (DfE) factual note	https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/550197/Regulated_activity_in_relation_to_children.pdf
Department of Health (DH) factual note	www.gov.uk/government/uploads/system/uploads/attachment_data/file/216900/Regulated-Activity-Adults-Dec-2012.pdf
DBS website	www.gov.uk/government/collections/dbs-referrals-guidance--2
DBS Home-based positions guide	www.gov.uk/government/publications/dbs-home-based-positions-guide