

Conwy Voluntary Services Council

Your local county voluntary council



4. Volunteers

4.17 The Independent Safeguarding Authority

On 1 December 2012 the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) merged to form the Disclosure and Barring Service (DBS). As a result 'CRB checks' are now called 'DBS checks' and ISA barred lists are now known as DBS barred lists.

A criminal records check is a process of gathering information about an applicant's criminal record and includes spent and unspent convictions, cautions, reprimands and final warnings held on the Police National Computer (PNC).

For most jobs or volunteer positions an employer is not allowed to know about an individual's criminal record other than those convictions which are considered 'unspent'. Most cautions and convictions eventually become 'spent' after a certain amount of time (called the rehabilitation period) has passed. Some sentences never become spent such as a prison sentence of more than 2 ½ years.

However, for positions working with vulnerable groups an organisation can ask for a criminal records check.

There are 3 types of check.

1. Standard DBS check

There are some professions and job roles where an employer can ask to see an individual's full criminal record. These are known as exempted positions and listed under the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975. A standard disclosure will show all criminal record information held on the PNC; spent and unspent convictions, cautions, reprimands, final warnings.

2. Enhanced DBS check

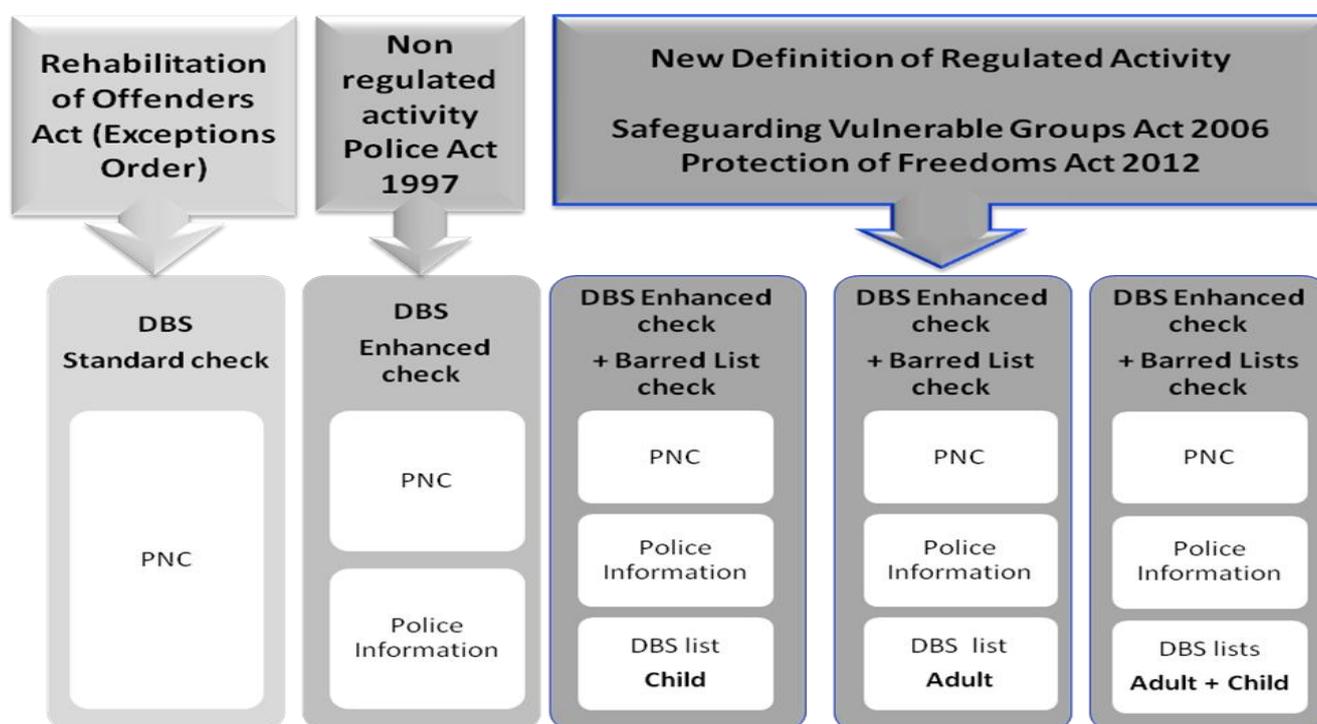
There are certain types of work, particularly those working with children and adults, considered vulnerable at that particular time, for which there is eligibility for the highest level of criminal records checks known as an enhanced check. These positions must be specified in the Exceptions Order to the Rehabilitation of Offenders Act 1974 **and** regulations made under the Police Act 1997. An enhanced disclosure includes all criminal record information held on the PNC as above and also non conviction information which the police believe to be reasonably relevant to the post for it to be disclosed.

3. Enhanced DBS check with Barring list(s) check - Regulated activity

The Safeguarding Vulnerable Groups Act 2006 sets out the activities and work which a person who has been barred from working with a particular vulnerable group, children and/or adults, must not do. This is known as regulated activity.

The Protection of Freedoms Act 2012 revised the definition of regulated activity to focus on work which involves close and unsupervised contact with vulnerable groups including children. The new definition came into effect September 2012.

Employers who wish to engage a person in regulated activity must not knowingly employ a barred person and can ask for an enhanced DBS check to include a check against the relevant DBS barring list (children and/or adults list). This barring list check will show if someone is included or not on the relevant DBS list.



Cost of DBS Checks

DBS checks for volunteers are free of charge. A volunteer for DBS purposes is defined as 'a person who performs 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'

For paid employees the DBS charges

- Standard check £26
- Enhanced check with or without barring list checks(s) £44

Accessing DBS checks

DBS checks can only be accessed through the Disclosure and Barring Service via Registered Bodies (RBs). An individual cannot do a criminal records check on themselves.

An organisation that uses DBS checks can apply to DBS to become an RB. However, certain conditions need to be met and many organisations may consider this inappropriate for them or may be unable to meet the criteria. Alternatively, an organisation can use the services of a DBS Umbrella Registered Body (URB) which acts on behalf of other organisations but will usually charge an administration fee in addition to the DBS cost of a check.

WCVA Criminal Records Unit

Wales Council for Voluntary Action Criminal Records Unit (CRU) acts as a DBS umbrella body for the third sector within Wales. CRU is funded by Welsh Government and all third sector organisations in Wales can use the service for **free** access to DBS checks.

WCVA CRU is amongst the top 25 RBs and offers a fully bilingual advice and guidance service alongside both paper and electronic (ebulk) application routes. A telephone enquiry line ☎08000 197 391 and website www.wcva-cru.org.uk gives help with eligibility decisions and application alongside wider safeguarding information.

To check or not to check

A DBS check can only be requested where eligibility conditions are met and cannot be carried out on anyone under 16 years old: It is a criminal offence otherwise.

Eligibility decisions can be quite complicated and often voluntary organisations are under pressure by funders or insurers to carry out 'blanket' checks on all volunteers and staff even when there is no eligibility. It is therefore important that DBS checks are not considered in isolation but as part of a wider safeguarding process and that they are accessed by an experienced RB who can support the eligibility decision.

DBS checks may be used as best practice or they can be mandatory where there is other legislation which requires a check against a barring list e.g. regulated (inspected) child day care positions. However, it is expected that by 2014/15 there will be a statutory duty to check against the barring lists for all those working in regulated activity.

Those activities and work which no longer meet the revised definition of regulated activity (e.g. some activities carried out by supervised volunteers) are still eligible for enhanced DBS checks but are not eligible for the barred list checks as part of that application.

Duty to refer

There is a legal duty to refer when an employer or organisation believes a person working in regulated activity has caused harm or poses a future risk of harm to vulnerable groups, including children.

Referrals should be made to the Disclosure and Barring Service (DBS) and further information can be found in the DBS Referral Guidance.

New Disclosure & Barring Services

Spring 2013 will see a single issue (applicant only) certificate and the introduction of a new Update Service which will allow 'portability' of an individual's check in certain circumstances.

A DBS check currently produces two copies of a criminal records certificate; one that is sent to the RB who countersigned the check and another to the applicant. This is set to change with a single certificate sent only to the applicant. This is to allow a person the right to see what information is disclosed or to dispute such information before it is made available to anyone else.

Organisations will be able to use online tracking to find out when the check is completed and whether the certificate is 'clear' or not. They will need to make arrangements to see the applicant certificate, check the certificate to ensure it is genuine and risk assess any information disclosed.

The online update service aims to make DBS checks more 'portable' and has the potential to avoid many unnecessary repeat applications. An individual will subscribe to use the updating service and organisations will be able to check online for free to see whether there is any new criminality information on a DBS certificate since it was last issued. Volunteers will be able to subscribe to use the updating service for free.

However, eligibility criteria must still be applied and care must be taken that the certificate subject to updating is appropriate to be used for any new role; specifically working with the appropriate workforce as children and/or adults or whether or not the certificate was originally issued for regulated activity and included a barring list check.

WCVA CRU is able to give more help and guidance with both the updating process and safeguarding issues around the single issue certificate.

Rehabilitation of Offenders

Whilst the focus of DBS is to help employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups including children, it is also important that volunteers who have a criminal record are treated fairly and are not discriminated against because of a conviction or other information revealed.

Any criminal information should be risk assessed and discussed with the volunteer. It is also required that an organisation using DBS checks follows the Code of Practice

which includes having a policy statement in place for the recruitment of ex offenders. A model policy is included with this information sheet.

A model recruitment of ex offenders policy

Introduction

This policy sets out the broad principles for the recruitment of ex offenders in <Name of organisation> and is to be considered alongside <Name of organisation> Equal opportunities policy. This policy is endorsed by <the Board etc. of the organisation> and will be reviewed <insert time-scale>, to ensure that it remains appropriate to the needs of <Name of organisation> and in accordance with the prevailing legislation

Commitment

<Name of organisation> is determined to make all efforts to prevent discrimination and other unfair treatment against any of its staff, potential staff or users of its service regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, physical disability or offending background that does not create a risk to children and vulnerable adults.<Name of organisation> also accepts that it has a corporate responsibility where appropriate to ensure the protection of vulnerable persons.

<Name of organisation> will ensure that that any criminal record information given by an individual is kept confidential and according to the requirements of the Data Protection Act, and, where appropriate, DBS Code of Practice

Code of Practice

- <Name of organisation> actively promotes equality of opportunity and welcomes applications from a wide range of candidates including those with criminal records. We have a written policy on the recruitment of ex-offenders, which is made available to all applicants at the outset of the recruitment process.
- Having a criminal record will not necessarily bar an individual from working with <Name of organisation>. This will depend on the nature of the position and the circumstances and background of offences disclosed. Applicants with criminal records will be treated according to their merits and in conjunction with any special criteria for the post (e.g. some are unable to work with vulnerable groups because they are barred from doing so).
- Unless the nature of the position entitles <Name of organisation> to ask questions about an applicant's entire criminal record, then we only ask about 'unspent' convictions as defined in the Rehabilitation of Offenders Act 1974. This information is requested on the application form.
- In using the Disclosure & Barring Service to assess an applicants' suitability for positions where there is an entitlement to know about someone's criminal record, <Name of organisation> undertakes to comply fully with the DBS Code of Practice

and not to discriminate unfairly on the basis of a conviction or other information revealed

- A DBS check is only requested after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned and meets legislative eligibility criteria. Assessment will be undertaken prior to an advertisement being placed. For those positions where a DBS check is required, all application forms, job adverts and recruitment briefs will contain a statement that a DBS check will be requested in the event of an individual being offered the position; such an offer being provisional and conditional upon a satisfactory check.
- Where a DBS check 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 and before the check is undertaken. For such positions, *<Name of organisation>* will request that this information is volunteered by the applicant and is sent under separate, confidential cover to a designated person within *<Name of organisation>*. *<Name of organisation>* will guarantee that this information is strictly confidential and only seen by those who need to see it as part of the recruitment process.
- At interview or in a separate discussion, *<Name of organisation>* will ensure that an open and measured discussion takes place on the subject of any offences or other matter, revealed by the applicant and/or through Disclosure, if undertaken, that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to withdrawal of a conditional offer of employment.
- If an applicant reveals a serious criminal record, the recruiter within *<Name of organisation>* will consult the appropriate senior member of management. A decision to reject an applicant because of, or partly because of, a criminal record should relate to an aspect of person specification which is seen to be unmet. If possible, in these circumstances, *<Name of organisation>* will make every endeavour to advise the applicant why their application has been unsuccessful.
- *<Name of organisation>* will ensure that all those within the organisation who are involved in the recruitment process are 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.
- *<Name of organisation>* will make every applicant for a position that is subject to a DBS check, aware of the existence of DBS Code of Practice and make a copy available on request.

Further information

Criminal Records Unit:

www.wcva-cru.org.uk

Home Office

www.homeoffice.gov.uk/disclosure-and-barring

Gov.uk

www.gov.uk/crb-criminal-records-bureau-check

Disclaimer

The information provided in this sheet is intended for guidance only. It is not a substitute for professional advice and we cannot accept any responsibility for loss occasioned as a result of any person acting or refraining from acting upon it.

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