

# Wales Council for Voluntary Action

Supporting charities, volunteers and communities

## 4. Volunteers

### 4.10 Disclosure and Barring Services



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).

Many organisations working with children, young people and adults at risk require their staff and volunteers to undergo criminal records Disclosure and Barring (DBS) checks

#### **Using criminal record checks as part of safer recruiting**

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 4 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 (not protected) 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 (DBS) 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.

Third sector organisations can access DBS checks for their staff and volunteers through the services of a URB. Previously the sector was served by the WCVA Criminal Records Unit (CRU), which received funding from Welsh Government to provide a free access service. The Welsh Government has refocussed the funding to provide a wider safeguarding support service that is not specific to DBS check access.

WCVA has collated a Trusted Supplier List to recommend to third sector organisations in Wales. The List identifies those DBS Umbrella Registered Bodies that match as closely as possible the service that was provided under WCVA Criminal Records Unit.

These are commercial services and an administrative fee will be applied per application processed. Further information can be found here <https://www.wcva.org.uk/advice-guidance/third-sector-safeguarding-service/dbs-providers>

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

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 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.

<https://www.gov.uk/government/publications/dbs-referrals-form-and-guidance>

## **Recent changes to Disclosure and Barring Services**

**Single Issue Certificate** The DBS now provides only a single issue of a DBS certificate which goes to the applicant directly. Organisations will need to ask to see this certificate in order to assess suitability.

Organisations can use DBS online tracking to find out when the check is completed and then make arrangements to see the applicant certificate whilst confirming ID at the same time, check the certificate to ensure it is genuine and risk assess any information disclosed.

Although the recruitment process at advertisement and interview stage should have highlighted the need for the volunteer or paid employee to disclose any relevant criminal record, this provides a further opportunity to discuss any content which may

appear on the certificate. New staff and volunteers entering regulated activity should not start in their role until the appropriate barring list checks have been undertaken and confirmed by the organisation.

A DBS check has no official expiry date. Any information included will be accurate at the time the check was carried out. It is up to an employer to decide if and when a new check is needed, but this can be made far easier with use of the DBS Update service.

**Update Service** The DBS Update Service allows for a certain level of “portability” as a DBS certificate can be kept up-to-date and taken from role to role, within the same workforce, where the same type and level of check is required.

An individual can subscribe to join the Update service and an employer, with the applicant’s permission, can make a free online status check via the DBS website to see if the applicant’s certificate remains current i.e. no new information has been added since its issue. A new check need only then be carried out if the certificate status has changed and a new certificate is issued with its information updated.

The Update Service subscription costs £13 per year for employed staff but is free for volunteers. For further information and to join the update service [www.gov.uk/dbs-update-service](http://www.gov.uk/dbs-update-service).

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.

## **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 anyone who has a criminal record is treated fairly and is not discriminated against because of a conviction or other information revealed.

## **Disclosing criminal record information**

Since May 2013, some PNC information will now be filtered and will not appear on the certificate i.e. certain old and minor cautions and convictions are no longer subject to disclosure under the ROA Exceptions Order. Employers cannot take these old and minor cautions and convictions into account when making decisions about any individual. However, there are a range of serious offences including those of relevance for posts concerned with safeguarding children and vulnerable adults, that will never be filtered. <https://www.gov.uk/government/collections/dbs-filtering-guidance>

Job application forms will need to reflect the filtering changes so that a) employers ask the right questions and b) employees give the right (legally accurate) answer and employers are encouraged to include the paragraph below in their standard application forms.

*“The amendments to the Exceptions Order 1975 (2013) provide that certain spent convictions and cautions are 'protected' and are not subject to disclosure to employers, and cannot be taken into account”*

Also as part of recruitment (of paid employee or volunteer) employers are advised to ask;

*“Do you have any convictions, cautions, reprimands or final warnings that are not "protected" as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013)”*

Any criminal information should be risk assessed and discussed with the volunteer (or paid employee). 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.

## Further information

The [Investing in Volunteers Standard](#) requires (Indicator 6.8) that the organisation's approach to the use of official checks takes account of relevant Government guidelines and the roles in which volunteers are placed and (Indicator 6.9) that the organisation has considered which types of conviction/disciplinary action may or may not be relevant to the volunteering role

### WCVA Safeguarding Service:

<https://www.wcva.org.uk/advice-guidance/third-sector-safeguarding-service>

### Disclosure and Barring Services


[www.gov.uk/government/organisations/disclosure-and-barring-service](http://www.gov.uk/government/organisations/disclosure-and-barring-service)

[Model policies on safeguarding \(incorporating the use of DBS checks\) and the recruitment of ex-offenders](#) can be downloaded and adapted for your own use

### 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.

### For further information contact

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