

Disclosure Barring Service (DBS) Policy

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1.0 Overview

The Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) have merged and are now known as the [Disclosure Barring Service \(DBS\)](#).

Staff and volunteers in the education and health and social care sectors work with vulnerable members of society. The law requires appropriate checks be carried out to ensure that people who pose a threat to service users or staff are not given positions of trust where they could exploit children or vulnerable groups entrusted to their care.

2.0 Policy

This policy applies to all NYCC employees, including school based employees.

Any employee or volunteer who engages in regulated activity must complete a North Yorkshire County Council (NYCC) DBS check and be cleared before commencing in the role. Any post that meets the new definitions of regulated activity (effective from Sept 2012, see Appendix 1) will be eligible for an enhanced DBS + Barred List check; however any post that does not meet the new definition but met the old definition (pre Sept 2012, see Appendix 2) will be eligible for an enhanced DBS check only. The new definitions of regulated activity are at Appendices 1 and 2. Further changes came in to effect from December 2012 –please refer to appendix 7 for full details.

Existing employees or volunteers must undertake a DBS recheck. Schools and Passenger Transport Contractors will recheck every 3 years due to the level of safeguarding requirements. These groups will be transitioning to 5 years with the introduction of portability and continuous updating which is expected in 2013. All other NYCC staff will re-check every 5 years.

2.1 Supporting legislation and requirements

The Disclosure Barring Service (DBS) was established under **the Protection of Freedoms Act 2012** and merges the functions previously carried out by the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).

The Criminal Records Bureau was set up under the **Police Act 1997** to carry out DBS (CRB) checks on potential employees for employing organisations. DBS checks must be carried out in accordance with the DBS [Code of Practice](#). All certificates are stored in accordance with the [DBS Storage and Disposal of DBS certificates](#) policy and must not in any circumstances be held on the employees personal file or held locally; records will be maintained by Employment Support.

The **Protection of Freedoms Act 2012** amends the Safeguarding Vulnerable Groups Act 2006 and Police Act 1997. The act reduces the scope of positions that would be required to undertake a DBS check and therefore increases the responsibility for the employer to manage safeguarding within its organisation.

- Employers have a duty to ensure that a barred person is not employed. They will be breaking the law if they knowingly do so.
- If an employer engages a person in regulated activity and then dismisses or removes them because they have caused harm, they must inform the DBS who is responsible for maintaining the children's and adults' barred lists. They also need to consider making a referral if the person leaves prior to the conclusion of procedures that could have led to their dismissal or removal. NYCC has a legal responsibility to refer safeguarding concerns to the DBS.

The [Rehabilitation of Offenders Act \(ROA\) 1974](#) is aimed to help people who have been convicted of a criminal offence and who haven't re-offended since.

- Convictions of 30 months or less become spent after a rehabilitation period which is determined by the severity of the offence and do not need to be declared to a potential employer providing there are no further offences.
- Convictions of 30 months or more are never spent and are classed as unspent convictions.

Full details of Rehabilitation periods are available at Appendix 4.

Regulated Activity is an exemption to the rule listed in the Exceptions Order to the ROA, relating to working with children or adults. All positions listed on the [Exceptions Order](#) require a DBS check and applicants must declare both spent and unspent convictions. The exemption is applied by the employer requiring an individual to complete a DBS application.

We can complete an enhanced DBS check on roles in the following way:

1. If a post meets the definition of 'Regulated Activity' as defined in Appendix 1 we must carry out an enhanced DBS disclosure including a barred list check.
2. If a post meets the old/previous definition of 'Regulated Activity' as defined in Appendix 2, but does not meet the current definition, we must carry out an enhanced DBS check excluding barred list check, as it is no longer deemed as regulated activity, however still has an exemption to the ROA.
3. If the applicant is aged 16 years or over

2.2 Additional safeguarding responsibilities for managers

With the introduction of the Protection of Freedoms Act 2012, NYCC's safeguarding responsibilities have significantly increased. A manager's role must now become an ongoing surveillance role in terms of managing safeguarding for the life cycle of an employee.

A DBS check is only one of the pre-employment clearances to be obtained before an applicant can start work and the manager must complete all other pre-employment clearances including:

- proof of eligibility to work, (see [Prevention of illegal working policy](#))
- robust, relevant and valid references ([see reference policy](#))
- copies of original qualifications and registrations appropriate to the role
- 'mandatory questions' including exploration of previous convictions
- medical clearance.

All elements of the recruitment process should be followed to achieve safe and robust recruitment practice. Please refer to the current [Recruitment and Selection Policy](#) for further guidance. Schools should refer to the [Recruitment and Selection Policy and Procedure for Schools](#) on the Schools HR Website.

For volunteers please refer to Volunteer Policy available from Risk Management.

2.3 Safeguarding training

Recruiting managers **must** complete both **mandatory** online 'Safer Recruitment' and 'Recruitment and Selection' training available on the [learning zone](#). Additionally for recruiting managers in schools there is a **mandatory requirement** under the School Staffing (England) Regulations, that at least one person on the panel for the appointment of any member of school staff must carry out the Safer Recruitment training for schools which is now provided via the [Department for Education](#) website.

3.0 Procedure

All posts that met the pre Sept 12 definition of regulated activity have been tagged in Resourcelink to flag that a DBS check is required. These posts are entitled to an enhanced DBS check. If any of these posts also meet the definition of regulated activity (Sept 12), then there is entitlement to an enhanced DBS + barred list check. For new posts, the online post creation document includes a question on whether a DBS check is required. Managers are responsible for checking whether a post meets the new definition of regulated activity for eligibility and ensuring the post details accurately reflect the DBS status of the post.

It is illegal to submit a DBS application for a post not designated as requiring a check. Posts giving access to sensitive data relating to children or adults are no longer eligible for a DBS check following the removal of controlled activity from the DBS scheme.

Managers must ensure all job adverts, job descriptions and person specifications are clear if the post requires a DBS check, and should also state the commitment to safeguarding within them.

3.1 DBS Online process

All applications for a DBS check are completed online.

NEW JOB APPLICANTS:

For staff: Applicants will be alerted to complete a DBS application form by Employment Support. If shortlisted for interview. Applicants follow the link sent to them in an email in order to apply. Managers need to verify evidence of identity at interview.

For School staff: Schools inform applicants to complete an online DBS application form available from the DBS Website - www.northyorks.gov.uk/dbs and bring evidence for verification to interview.

RECHECKS:

Managers and Head Teachers will receive notification of rechecks due for their staff from Employment Support. Applicants will need to login to www.northyorks.gov.uk/dbs for full details of how to apply. Applicants will need to make an appointment with their manager or Head Teacher to have their evidence verified.

MANAGERS: Verifying Documents:

In all circumstances verification of identification documents for DBS must be completed on a face to face basis using original evidence. **Only** documents included on the [DBS identity check](#) guidance provided by the Home Office can be accepted. Managers should complete the verification form and submit this to dbsverification@northyorks.gov.uk. The check cannot proceed until this information is returned. Full guidance for the applicant and verifier is available at www.northyorks.gov.uk/dbs.

Employment Support will match the application form with the verification form and securely send this to DBS for processing.

Please note: the recheck period for schools and integrated passenger transport contractors is 3 years (this will transition to 5 years with the introduction of portability and continuous updating planned for 2013), for other NYCC staff it is 5 years. Further details are available at appendix 3.

Receiving DBS Results:

Managers and schools will be advised of DBS clearance by email and must ensure that all other clearances are completed before allowing an applicant to start. Schools must include details of the DBS certificate in the [Single Central Record](#).

Where a certificate contains information, it will be referred to the relevant designated 'Safeguarding – DBS Decision Maker' /Head Teacher for decision. A full list of the decision makers is available at appendix 5. Consideration will be given to the type of conviction; time elapsed since the last conviction and relevance to the position applied for. Certificates **must only** be stored by Employment Support in accordance with DBS Policy and Data Protection, and **must not** be held on personal files. To ensure there is an audit trail, information relating to the decision making process for these certificates should be retained on personal files for those that are employed.

3.2 Applicants who have lived abroad

If the applicant has spent time living abroad, the DBS will not cover periods spent outside of the UK. Managers should advise the applicant to provide a certificate of good conduct from the country in which they resided. It is the applicant's responsibility to obtain and pay for this certificate. Further information is available from the [Foreign and Commonwealth website](#).

3.3 Starting work

All clearances must be completed before a successful applicant is allowed to start work, including the DBS check.

3.4 Exceptions

It is NYCC policy that there are no exceptions to starting work without a DBS.

3.5 Declaration of convictions during employment with NYCC

With the introduction of the Protection of Freedoms Act, managers have a greater responsibility for safeguarding. All employees are required to declare to their line manager any convictions that occur during their employment. Further details are available on the declaration of convictions policy [here](#).

3.6 Concerns regarding staff conduct

If an employee is suspected of conduct which would lead to their inclusion on one of the barred lists, the manager should firstly refer to the [Disciplinary Policy and Procedure, allegations against staff policy](#) and must also gain advice from HR to ensure that they undertake their duties regarding the need to declare their concerns to DBS.

4.0 Portability

It is NYCC Policy that DBS checks are not transferrable. All workers joining NYCC must undertake a new DBS check to ensure that they are suitable for the role prior to commencement.

Volunteers who take up paid employment must undertake a new DBS check, as the level of responsibility is expected to be greater than that of a volunteer.

Existing members of staff will be required to undertake a new check if their new role has greater access or responsibility for children or vulnerable groups than that previously held; or where they move from one sector to another and the appropriate barred list needs to be checked. DBS checks are specific to the post for which they are applying /completing: different information may be disclosed depending upon the relevance to the role applied for therefore often not transferable when moving from one NYCC post to another NYCC post. Always seek advice from Employment Support.

5.0 Breaks in Service

NYCC's policy states a new DBS check must be completed when a break in service of 3 months or more occurs. This follows best practice policy as advised by the Department for Education. Further guidance is available from [Safeguarding Children and Safer Recruitment in Education](#).

This is the standard policy for all NYCC and school staff including casual and relief staff.

6.0 Volunteers

The DBS definition of a volunteer is someone who spends unpaid time doing something which aims to benefit someone other than themselves.

A student wishing to undertake work experience is gaining experience from the placement and is therefore not a volunteer. If you require advice regarding the cost of DBS checks, please contact Employment Support.

Volunteers who are supervised at a reasonable level are only eligible for an enhanced DBS check which does not include a barred list check. The reason for this is they do not meet the current definition of regulated activity but continue to meet the requirements of the old definition. This group of volunteers will continue to require an enhanced DBS check and barred list check will no longer be allowed.

The role of Governor also falls under this category therefore must only be subject to an enhanced DBS check.

7.0 Frequently asked questions

What does an enhanced check provide?

An enhanced DBS contains all spent and unspent convictions, cautions and reprimands from the Police National Computer as well as relevant Police information held locally. Further information is available [here](#).

As a manager I am engaging an agency worker do I need a DBS check?

NYCC managers must only engage workers through Matrix (see [agency policy](#)) and must ensure that they obtain written confirmation of all clearances including a DBS check if appropriate; these documents should be available to you via the Matrix system. **Schools that choose to engage agency workers should ensure the agency has obtained the appropriate clearances.**

Can NYCC carry out checks of other organisations, in particular academies?

Yes, NYCC is set up as an umbrella body with National DBS and has authorisation to carry out checks for other organisations.

Who can verify evidence for the DBS check?

Evidence should be verified by the line Manager, if this is not possible, please contact Employment Support for further guidance.

What happens if the applicant can not provide sufficient evidence?

Please contact Employment Support for further guidance.

Please click [here](#) to view additional frequently asked questions that were prepared by the government following these changes.

Appendix 1

Definition of 'Regulated Activity' from September 2012

All posts that meet the new definitions for children or adults are eligible to an enhanced DBS check + a barred list check for the appropriate group.

1 New definition of Regulated Activity relating to children

The new definition of regulated activity relating to children comprises only:

- (i) Unsupervised activities: teach, train, instruct, care for, or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children.
- (ii) Work for a limited range of establishments ('specified places') with opportunity for contact with children: for example schools, nurseries, pupil referral units, children's centres, children's homes, childcare premises. This definition **does not** include work by supervised volunteers. Further guidance regarding supervision is available at appendix 6.

NOTE: Work under (i) or (ii) is regulated activity only if done 'regularly'. Further guidance is to be provided about supervision of activity which would be regulated activity if supervised.

- (iii) Relevant personal care, for example washing or dressing or health care by or supervised by a professional
- (iv) Registered childminding and or foster carers.

Activities no longer covered by the new definition of regulated activity include:

- Activities supervised at a reasonable level – children
- Health care not by, or directed, or supervised, by a health care professional
- Legal advice
- Treatment/therapy

Activities in relation to '**specified places**' that are no longer covered by the new definition include:

- Occasional or temporary services e.g. maintenance,
- Volunteers supervised at reasonable levels e.g. supervised voluntary football coach,
- Office Holders
- Governors
- Inspectorates removed

3.2 New Definition of Regulated Activity relating to adults

The new definition of regulated activity relating to adults no longer labels adults as vulnerable. Instead the definition identifies the activities which, if any adult requires them, lead to that adult being considered vulnerable at that particular time. This means that the focus is on the activities required by the adult and not on the setting in which the activity is received, nor on the

personal characteristics or circumstances of the adult receiving the activities. There is also no longer a requirement for a person to do the activities a certain number of times before they are engaging in regulated activity.

Regulated activity continues to exclude any activity carried out in the course of family relationships, and personal, non commercial relationships. E.g. family relationships involving close and relationships between two people who live in the same household and treat each other as family.

An adult is a person aged over 18 years of age.

There are six categories of people who will fall within the new definition of regulated activity and this includes anyone who provides day to day management of supervision of those people.

A broad outline is set out below.

1. Healthcare:

I.e. a regulated healthcare professional or an individual acting under the direction or supervision of one, e.g. doctors, nurses. Health care includes all forms of healthcare, whether relating to physical or mental health or palliative care.

2. Personal Care:

I.e. assistance with washing and dressing, eating, drinking and toileting oral care or care of the skin, hair or nails because of an adult's age, illness or disability or teaching someone to do these tasks. This does not include physical assistance provided to an adult in relation to cutting their hair. This is not classed as regulated activity.

3. Social Work:

I.e. provided by a social care worker and is required in connection with any health care or social services to an adult who is a client or potential client. Including assessing and reviewing the need for health and social care services.

4. Assistance with general household matters:

Any person who provides day to day assistance to an adult because of their age, illness or disability and includes at least one of the following – managing a person's cash, paying bills, or shopping on their behalf.

5. Assistance with the conduct of an adult's own affairs:

Anyone who provides various forms of assistance in the conduct of an adults own affairs. E.g. lasting or enduring power of attorney; or appointment as adults' 'deputy' under the Mental Capacity Act 2005

6. Conveying:

I.e. conveying adults for reasons of age, illness or disability to, from or between their place of residence and a place where they have or will be receiving healthcare, personal care or social work.

Note: Regulated activity for adults continues to exclude any activity carried out in the course of family relationships, and personal, non commercial relationships.

Important Guidance:

The activities and work that will no longer fall under these new definitions, but that satisfied the old definitions of regulated activity (appendix 2) are still eligible for an enhanced DBS check, but they will no longer be eligible for barred lists checks. The reason for this is because the posts continue to meet the old definition of regulated activity (see [Appendix 2](#)) and are therefore exempt from the rehabilitation of offenders act.

Appendix 2

Definition of 'Regulated Activity' prior to September 2012

A post that meets the definition below, but not the definition in Appendix 1 is eligible of an enhanced DBS (CRB) check excluding barred list checks.

Involves contact with children or vulnerable adults

Of a specified nature <i>or</i>	"Frequently, intensively and/or overnight"
In a specified place	

Or is a specified role:

- No distinction made between paid and voluntary work

In detail

<p>of a specified nature E.g. teaching, training, care, supervision, advice, treatment or transport Or</p>	<p>"frequently, intensively and/or overnight"</p> <ul style="list-style-type: none"> ● once a week for most services, <i>but once a month or more for health and social care services involving personal care</i> ● takes place on 4 days in one month or more ● Overnight: between 2 – 6am
<p>In a specified place E.g. Schools, Pupil Referral Units, Childcare premises (nurseries), Children's homes and hospitals, children's detention facilities, children's centres, adult care homes</p>	

The guidance states that there is only a requirement to check if the frequent / intensive test takes place in a single specified setting.

- Or is a specified role
E.g. Directors of Children's services, members of Youth Justice Board, School Governors
- There is no distinction made between paid and voluntary work

Appendix 3 DBS (CRB) 5 Year Rechecking

The DBS (CRB) rechecking period has been extended to 5 years for most areas. To implement these changes some areas will have a phased approach in those that are considered most at risk; this includes schools and transport to schools, and some areas are to remain at 3 years due to legislative requirements.

For the groups where a phased approach is to be implemented any checks that are due now should be completed as normal and will be given a 5 year renewal date on completion.

This approach will allow the County Council to maintain a high level safeguarding in its more vulnerable areas, whilst waiting for the Government to give further information on the recommendations of its recent review of the CRB and VBS schemes now known as the Disclosure Barring Service.

Checks for Fostering and Adoption will continue to be checked on a three yearly basis in line with current legislation.

If there are any forms received for rechecks due after 1.4.11 which do not fall under the criteria below, the person verifying will be advised that the form does not need to be processed and the form will be destroyed.

The following timetable shows how this will affect each group -

Area Submitting DBS Applications	New Starters	Rechecks	Action	Result
Schools and School Transport, including Governors, Work Experience and Volunteers within a school	Yes	Yes	Submit as normal	New certificate issued with 5 year renewal date
Fostering and Adoption – Children's Social Care	Yes	Yes	Submit as normal	New certificate issued with 3 year renewal date
All other areas including Adult and Community Services Children's Social Care other CYPS other County Caterers Corporate Property Management Direct Payments BES/CEG.FIN	Yes	No Rechecks will be required in 2011/12 as they will be completed in 2013/14	Submit as normal	New Certificate issued with 5 year renewal date

The emerging national picture regarding DBS regulations will be continually reviewed and we will therefore review the groups in the phased approach alongside this and communicate any changes as appropriate.

**Appendix 4
Rehabilitation Periods**

Rehabilitation Periods		
Sentence	Age 18 or over when convicted	Under 18 when convicted
Prison and Young Offender Institution – sentence of more than 6 months - 2½ years	10 years	5 years
Prison and Young Offender Institution – sentence of 6 months or less	7 years	3½ years
Fines, compensation order, probation (for people convicted on or after 3 February 1995), community service, combination order, action plan, curfew order, drug treatment, reparation order	5 years	2½ years or until the order expires (whichever is longer)
Borstal (abolished 1983)	7 years	7 years
Detention centres (abolished 1988)	3 years	3 years
Absolute discharge	6 months	6 months
Sentences for which the rehabilitation period varies:	Rehabilitation Periods	
Probation order (for people convicted prior to 3 February 1995), conditional discharge, bind over, supervision order, care order	1 year or until the order expires (whichever is longer)	
Attendance centre orders	1 year after the order expires	
Hospital order	2 years after the order expires (with a minimum of 5 years from the date of the conviction)	
Referral order	Once the order expires	
Sentences introduced in 1998 for young people with different rehabilitation periods:	Age 12, 13 or 14 when convicted	Age 15, 16 or 17 when convicted
Detention and training order of 6 months or less	1 year after the order expires	3½ years
Detention and training order of more than 6 months	1 year after the order expires	5 years

Appendix 5
List of Designated Decision Makers

Directorate	Service	Job Title of Decision Maker	Name of Current Post Holder
CYPS	Schools & County Caterers	HR Manager - Schools	Mairi Reed
CYPS	Fostering and Adoption Applicants only	Head of Fostering	Annie Shaw
		Special Guardianship	Vickie Metheringham
CYPS	CYPS inc Children Centres	Head of HR CYPS	Penny Yeadon
CS	Cleaning Corporate Property Management /Contractors	Corporate Property Operations Manager	Karen Adamson
BES	IPT Integrated Passenger Transport contractors	Compliance Team Leader	Liz Tyerman
		Assistant Director	Richard Owens
CS/BES	Staff BES/CS	Head of HR BES/CEG/FCS	Andrew Ellis
CS	Library & Community Services	Asst Director – Library & Community Services	Julie Blaisedale
HAS	All	Assistant Director - Operations & Direct Payments	Anne Marie Lubanski

Appendix 6

DBS Secure Storage Retention of Information

North Yorkshire County Council
Policy Statement on the Use, Secure Storage, Retention and Disposal of
Certificates and Certificate Information (Electronic DBS (CRB) process)

General Principles

As an organisation using the Disclosure and Barring Service (DBS) to help assess the suitability of applicants for positions of trust, North Yorkshire County Council complies fully with the Code of Practice regarding the correct handling, use, storage, retention and disposal of Certificates and Certificate information. It also complies fully with its obligations under the Data Protection Act 1998 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of Certificate Information and has a written policy on these matters, which is available to those who wish to see it on request.

Storage and Access

Certificate information is never kept on an applicant's personal file and is always kept separately and securely, in lockable, non-portable, storage containers with access strictly controlled and limited to those who are entitled to see it as part of their duties. Electronic certificate information is held on a secure password protected system accessible only to those authorised to view it in the course of their duties.

Handling

In accordance with S.124 of the Police Act 1997, Certificate Information is only passed to those who are authorised to receive it in the course of their duties. We maintain a record of all those to whom Certificates or Certificate information has been revealed and we recognise that it is a **criminal offence** to pass this information to anyone who is not entitled to receive it.

Usage

Certificate information is only used for the specific purpose for which it was requested and for which the applicant's full consent has been given.

Retention

Once a recruitment (or other relevant) decision has been made, we do not keep Certificate information for any longer than is necessary whether in electronic or paper format. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep Certificate information for longer than six months, we will consult the DBS about this and will give full consideration to the Data Protection Rights and Human Rights of the individual before doing so. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail.

The only exceptions allowed by the DBS are as follows:

- For establishments regulated by the commission for Social Care Inspection (CSCI) then certificates must be destroyed after 12 months
- For staff employed in residential schools certificates must be destroyed after 12 month
- For certificates relating to fostering or adoption, certificates must be destroyed after 36 months

Disposal

Once the retention period has elapsed, we will ensure that any Certificate information is immediately destroyed by secure means, ie by shredding, pulping or burning. While awaiting destruction, Certificate information will not be kept in any insecure receptacle (e.g. waste bin or confidential sack). We will not keep any photocopy or other image of the Certificate Information or any copy or representation of the contents of Certificate Information. However, notwithstanding the above, we may keep a record of the date of issue of Certificate Information, the name of the subject, the type of Certificate requested, the position for which the Certificate Information was requested, the unique reference number of Certificate Information and the details of the recruitment decision taken. For disposal of electronic results and information, the system automatically deletes the record in line with DBS retention guidelines above, automatically archiving only the minimum information as laid out in the DBS Code of Practice and in line with the paper process.

Acting as an Umbrella Body

Before acting as an Umbrella Body (one which countersigns applications and receives Certificate information on behalf of other employers or recruiting organisations), we will take all reasonable steps to satisfy ourselves that they will handle, use, store, retain and dispose of Certificate information in full compliance with the DBS Code and in full accordance with this policy. We will also ensure that any body or individual, at whose request applications for Certificates are countersigned, has such written policy and, if necessary, will provide a model policy for that body or individual to use or adapt for this purpose.

Important Changes to Disclosure and Barring Guidance

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1.0 Who is affected?

The Government is making important changes to criminal records and barring arrangements. These changes take effect from September 2012 and will significantly affect North Yorkshire County Council's current safeguarding and recruitment processes.

On 1st December 2012, the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA) merged organisations and are now known as The Disclosure Barring Service (DBS). DBS has made changes to the DBS identity checking process which is essential in order to verify an individual's identity when completing a DBS application.

If you engage people to work with vulnerable groups these changes will affect your current work practice.

2.0 What change is the Government making, and why?

In May 2010 the Coalition Government stated its intention to scale back safeguarding regimes to more proportionate and 'common sense' level and halted the Vetting and Barring Scheme. A two phase review was carried out and the recommendations of these are now included in the Protection of Freedoms Act 2012. Further information is available [here](#)

The Government is committed to protecting vulnerable groups including children and recognises there is a need to provide a focused and effective safeguarding system, where harm and risk of harm is identified, acted upon and effectively and ultimately prevented. The Government has had a large influence on safeguarding decisions via the management of 'barred' lists and a wide reaching application of regulated activity. These measures are being significantly 'scaled-back' and therefore safeguarding responsibilities are now moving increasingly to the employer who has a vital role to play.

As the Government reduces its role, NYCC including schools must ensure that it reacts positively to these changes by having robust safeguarding practices in place with well trained responsible managers at the fore in order to maintain a high level of safeguarding.

What are the changes?

A new scaled back definition of regulated activity which further reduces the number of posts that are eligible for a 'barred list' check.

The definition of controlled activity has been removed. Controlled activity was traditionally the roles that involved working with sensitive information: they are now not eligible for a DBS check.

The requirement for ISA registration has been removed from the new scheme; in fact this was never introduced.

The ability for the police to release 'additional information' has been removed in order to improve openness and transparency.

A more rigorous relevancy test for locally held police information has been introduced which reduces the information released on an enhanced DBS to only that which is deemed relevant to the post for which they are applying.

Applicants also have the right of reviewing the information declared on their DBS, and challenge this with the police force.

A minimum age of 16 at which someone can apply for a DBS check.

Individuals that are 'barred' to work in regulated activity will be restricted to only those that are currently working in or actively seeking to commence 'regulated activity' (for example: undertaking a qualification to become a teacher, social worker etc.)

The type of documents used to verify an individual's identity and address history for the purpose of completing a DBS check has changed significantly. National DBS has introduced a more robust checking process for the validation of an individual's identity when submitting a DBS check. The changes will make it more difficult for individuals to conceal previous criminal records by changing their name. Further details on these changes can be found in the New [DBS ID Guidance document](#).

What is not changing?

The employer is still required by law to make appropriate referrals to the DBS, regarding any safeguarding concerns they have about an employee.

It is a criminal offence for an employer to engage (paid or non paid) a barred person in regulated activity.

3.0 Changes from September 2012 in detail

There are now separate definitions of regulated activity for children and for adults.

The Safeguarding Vulnerable Groups Act 2006 defines the activities which are classed as 'regulated activity', which a barred person must not do. Regulated activity is being scaled back to focus on work which involves close and unsupervised contact with vulnerable groups including children. This scaling back reduces the number of posts which are eligible for a 'barred list' check. The current definition would, over time have included 9 million people; in the new definition it will be closer to 5 million.

3.1 New definition of Regulated Activity relating to children

The new definition of regulated activity relating to children comprises only:

- (v) Unsupervised activities: teach, train, instruct, care for, or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children.
- (vi) Work for a limited range of establishments ('specified places') with opportunity for contact with children: for example schools, nurseries, pupil referral units, children's centres, children's homes, childcare premises. This definition **does not** include work by supervised volunteers.

NOTE: Work under (i) or (ii) is regulated activity only if done 'regularly'. Further guidance is to be provided about supervision of activity which would be regulated activity if supervised.

- (vii) Relevant personal care, for example washing or dressing or health care by or supervised by a professional
- (viii) Registered childminding and or foster carers.

Activities no longer covered by the new definition of regulated activity include:

- Activities supervised at a reasonable level – children
- Health care not by, or directed, or supervised, by a health care professional
- Legal advice
- Treatment/therapy

Activities in relation to '**specified places**' that are no longer covered by the new definition include:

- Occasional or temporary services e.g. maintenance,
- Volunteers supervised at reasonable levels e.g. supervised voluntary football coach,
- Office Holders
- Governors
- Inspectorates removed

3.2 New Definition of Regulated Activity relating to adults

The new definition of regulated activity relating to adults no longer labels adults as vulnerable. Instead the definition identifies the activities which, if any adult requires them, lead to that adult being considered vulnerable at that particular time. This means that the focus is on the activities required by the adult and not on the setting in which the activity is received, nor on the personal characteristics or circumstances of the adult receiving the activities. There is also no longer a requirement for a person to do the activities a certain number of times before they are engaging in regulated activity.

Regulated activity continues to exclude any activity carried out in the course of family relationships, and personal, non commercial relationships. E.g. family relationships involving close and relationships between two people who live in the same household and treat each other as family.

An adult is a person aged over 18 years of age.

There are six categories of people who will fall within the new definition of regulated activity and this includes anyone who provides day to day management or supervision of those people.

A broad outline is set out below.

1. Healthcare:

I.e. a regulated healthcare professional or an individual acting under the direction or supervision of one, e.g. doctors, nurses. Health care includes all forms of healthcare, whether relating to physical or mental health or palliative care.

2. Personal Care:

I.e. assistance with washing and dressing, eating, drinking and toileting oral care or care of the skin, hair or nails because of an adult's age, illness or disability or teaching someone to do these tasks. This does not include physical assistance provided to an adult in relation to cutting their hair. This is not classed as regulated activity.

3. Social Work:

I.e. provided by a social care worker and is required in connection with any health care or social services to an adult who is a client or potential client. Including assessing and reviewing the need for health and social care services.

4. Assistance with general household matters:

Any person who provides day to day assistance to an adult because of their age, illness or disability and includes at least one of the following – managing a person's cash, paying bills, or shopping on their behalf.

5. Assistance with the conduct of an adult's own affairs:

Anyone who provides various forms of assistance in the conduct of an adult's own affairs. E.g. lasting or enduring power of attorney; or appointment as adults' 'deputy' under the Mental Capacity Act 2005

6. Conveying:

I.e. conveying adults for reasons of age, illness or disability to, from or between their place of residence and a place where they have or will be receiving healthcare, personal care or social work.

Note: Regulated activity for adults continues to exclude any activity carried out in the course of family relationships, and personal, non commercial relationships.

Important Guidance:

The activities and work that will no longer fall under these new definitions, but that satisfied the old definitions of regulated activity (appendix 2) are still eligible for an enhanced DBS check, but they will no longer be eligible for barred lists checks. The reason for this is because the posts continue to meet the old definition of [regulated activity](#) and are therefore exempt from the rehabilitation of offenders act.

Please refer to appendix 1 for detailed examples of the types of roles that will now require DBS checks, appendix 2 for the old definition of regulated activity and appendix 3 for guidance on assessing what type of DBS is applicable for your posts.

3.3 Future Changes after 2012

A new continuous update service that will provide portability of certificates is expected in 2013.

4.0 How will this impact on NYCC, including Schools?

4.1. Disclosure and Barring Changes

- Whilst the Government will continue to provide barring decisions and guidance, the focus is to redress the balance between civil liberties and safeguarding. NYCC's role is now, more than ever, paramount in managing safeguarding within the organisation and our schools; our accountability for the safeguarding of our staff, service users, students and communities remains our responsibility. However the tools we have historically used to aid our role in this has reduced. Managers therefore must take additional action in relation to safer recruitment and ongoing safeguarding surveillance practice to address the gaps. A working group has now been set up to make recommendations for changes to our current safeguarding practice.
- All managers must be clear and understand the definitions of regulated activity to enable them to understand what type of post requires which type of DBS check.
- Under the new definition of regulated activity there is a reduction in the number of posts that will be eligible for an enhanced DBS check that includes a barred list check.
- For those roles that no longer meet the new definition (Post September 2012) of regulated activity but did meet the old definition of regulated activity (Prior to September 2012- appendix 2) we are able to complete enhanced DBS checks only (so it will not include a barred list check). This includes Governors, supervised volunteers, office holders etc. (see appendices for further guidance)
- The number of people included on the barred list will reduce to only include those who are currently completing regulated activity or who are studying/applying to enter regulated activity. The deterrent to apply to work in regulated activity has significantly been reduced and

therefore we need to significantly increase our vigilance and vetting procedures.

- NYCC **must not** knowingly employ a barred person in regulated activity as this is a criminal offence, which may result in prosecution.
- If you dismiss or remove a person from regulated activity (or would have done so had they not already left) because they harmed or posed a risk of harm to vulnerable groups including children, you are legally required to forward information about that person to the DBS. It is a criminal offence not to do so.
- If the person has committed a criminal offence you must pass this information to the police.
- Our safeguarding responsibilities are now far greater than ever, We must consider the wider safer recruitment responsibilities of the County Council.. All managers have a responsibility to ensure that their safeguarding role goes beyond this. Full advice and guidance regarding safer recruitment practice is detailed in the online Safer Recruitment learning package which is mandatory for managers, recommended for Schools and available on [Learning Zone](#). For schools, the mandatory requirements for at least one member of the panel to have undertaken the DFE Safer Recruitment has not changed.
- North Yorkshire County Council needs to have clear well managed arrangements for safeguarding. This includes ensuring that all staff are appropriately recruited, trained and managed.
- Vigilant ongoing, day-to-day management is crucial in order that unusual or concerning behaviour is picked up at the earliest opportunity. A safe and robust recruitment process clearly makes an important contribution in this process.

4.2. DBS ID Checking

Managers will need to ensure that they follow the new DBS verification process closely, and ensure that anyone supporting the verification process is trained accordingly. Guidance on these changes is available [here](#)

5.0 What do Managers need to do now?

The Action Plan below sets out a manager's responsibilities in order to strengthen safeguarding within NYCC.

All managers **MUST:-**

- Complete Recruitment and Selection online learning ideally by end of September but no later than December 2012. This is mandatory for NYCC Managers, and recommended for Schools.
- Complete Safer Recruitment online learning training ideally by end of September but no later than December 2012. This is mandatory for NYCC Managers, and recommended for Schools.

These training courses are available from the [Learning Zone](#) website and take approx. 45 minutes each to complete. This training is recommended for schools but is not mandatory.

- Schools – at least one member of the recruitment panel should also complete the Mandatory Safer Recruitment Training course available from [Department for Education](#)
- Fully understand the implications of the changes outlined in this paper to be able to:
 - brief their team members responsible for recruitment and ongoing safeguarding surveillance
 - Understand which posts within their teams fall in which category and therefore what 'type' of DBS check should be completed (See appendix 3 for manager guide to deciding what type of DBS check is to be applied to a post)
- Ensure safer recruitment best practice is followed this includes but is not limited to:
 - Checking application forms and exploring gaps; robustly questioning and investigating references, examine reasons for leaving, relocation and changing career paths. Exploring motivations and behaviours around working with vulnerable groups.
 - Ensure all clearances are in place before commencement of employment (this includes internal applicants).
 - Follow the new DBS ID checking guidance and ensure all new and existing verifiers are trained. Verifiers must also complete mandatory training detailed above.
- Ensure vigilance when dealing with current employees, including raising awareness regarding employee's contractual requirement to [declare convictions](#)
- Make any appropriate referrals to the DBS where a person has been removed from regulated activity because they harmed or posed a risk of harm to vulnerable groups including children.
- Proactively check the DBS status of all team members using the DBS Status [Insight report](#) in order to ensure rechecks are carried out in a timely manner. This system is available from the intranet home page allowing a manager to check which members of their team are due a DBS recheck. From the intranet page the Manager needs to choose 'Insight dashboard reporting' from the computer system, followed by 'view my team reports and option 'staff DBS check status'. This is not currently available to schools.

Full guidance on the DBS process is available in the [DBS Policy Document](#).

All managers **MUST NOT**:-

- Employ a barred person in regulated activity – this is a criminal offence
- Employ an individual prior to receiving all clearances (including internal applicants).
- Only use the DBS as the answer to safeguarding as this is not or never has been the case.

Appendix 1- Examples of the types of roles requiring a DBS check

From Sept 2012 the following checks will be available:

Criteria	Type of Check to complete
Posts that fall under the new definition of regulated activity	Enhanced DBS + appropriate barred list
Posts that fall under the old definition of regulated activity but not the new definition of regulated activity	Enhanced DBS only
Posts that are listed as exceptions in the Rehabilitation of Offenders Act	Standard DBS only - (very rare)

Examples of roles and the type of DBS required

Directorate	Job Role	Enhanced DBS Check Only	Enhanced DBS + Barred List for children	Enhanced DBS + Barred List for adults	Action for Manager to complete on DBS Verification Form
HAS	Resource Worker, Social Workers Adults, Care Assistants, Social Care Coordinators, Start Workers, Home Care Managers and Assistant Home Care Managers	No	No	Yes	Answer 'yes' to question – Does post require a barred list check for vulnerable adults?
HAS	Hairdresser cutting hair in an adult care home once a month	Yes	No	No	ENH DBS allowed as post falls under old definition of regulated activity for vulnerable adults.
HAS	Care Assistant in care home cutting nails of adult who can't do so themselves	No	No	Yes	Answer 'yes' to question – Does post require a barred list check for vulnerable adults?
CYPS	All paid roles based in Schools / nurseries/Children's Centres/ Children's Care Homes/Pupil Referral Units/ – e.g. Teachers, GTA, MSA, Kitchen Staff, Office Assistant, Admin Assistant, Cleaners	No	Yes	No	Answer 'yes' to question – Does post require a barred list check for children

	Require Full DBS + Barred list checks See exceptions below				
CYPS	Governors, Inspectors, Advisors, Supervised Volunteers,	Yes	No	No	Answer 'no' to barred list questions
IPT	Driver School/Social Care	No	Yes	Yes	Answer 'yes' to requiring barred list check for both groups
CEG	Occupational Therapist – Adults	No	No	Yes	Answer 'yes' to barred list question - adults
CYPS	Governor	Yes	No	No	Answer 'no' to barred list questions
CYPS	Supervised Volunteer in specified place – e.g. school	Yes	No	No	Answer 'no' to barred list questions
HAS	Cleaner based in an Adult Care Home	Yes	No	No	Answer 'no' to barred list questions
HAS	Outdoor Education tutor - Adults – teaching IT skills to adults with learning disabilities	Yes	No	No	Answer 'no' to barred list questions
HAS	Care Assistant teaching someone with dementia to brush their teeth	Yes	No	Yes	Answer 'yes' to barred list question - adults

Appendix 2 – ‘Old Definition of Regulated Activity’ – Prior to September 2012

Involves contact with children or vulnerable adults

Of a specified nature <i>Or</i>	“Frequently, intensively and/or overnight”
In a specified place	

Or is a specified role:

- No distinction made between paid and voluntary work

In detail

of a specified nature E.g. teaching, training, care, supervision, advice, treatment or transport <i>Or</i>	“frequently, intensively and/or overnight” <ul style="list-style-type: none"> ● once a week for most services, <i>but once a month or more for health and social care services involving personal care</i> ● takes place on 4 days in one month or more ● Overnight: between 2 – 6am
In a specified place E.g. Schools, Pupil Referral Units, Childcare premises (nurseries), Children’s homes and hospitals, children’s detention facilities, children’s centres, adult care homes	

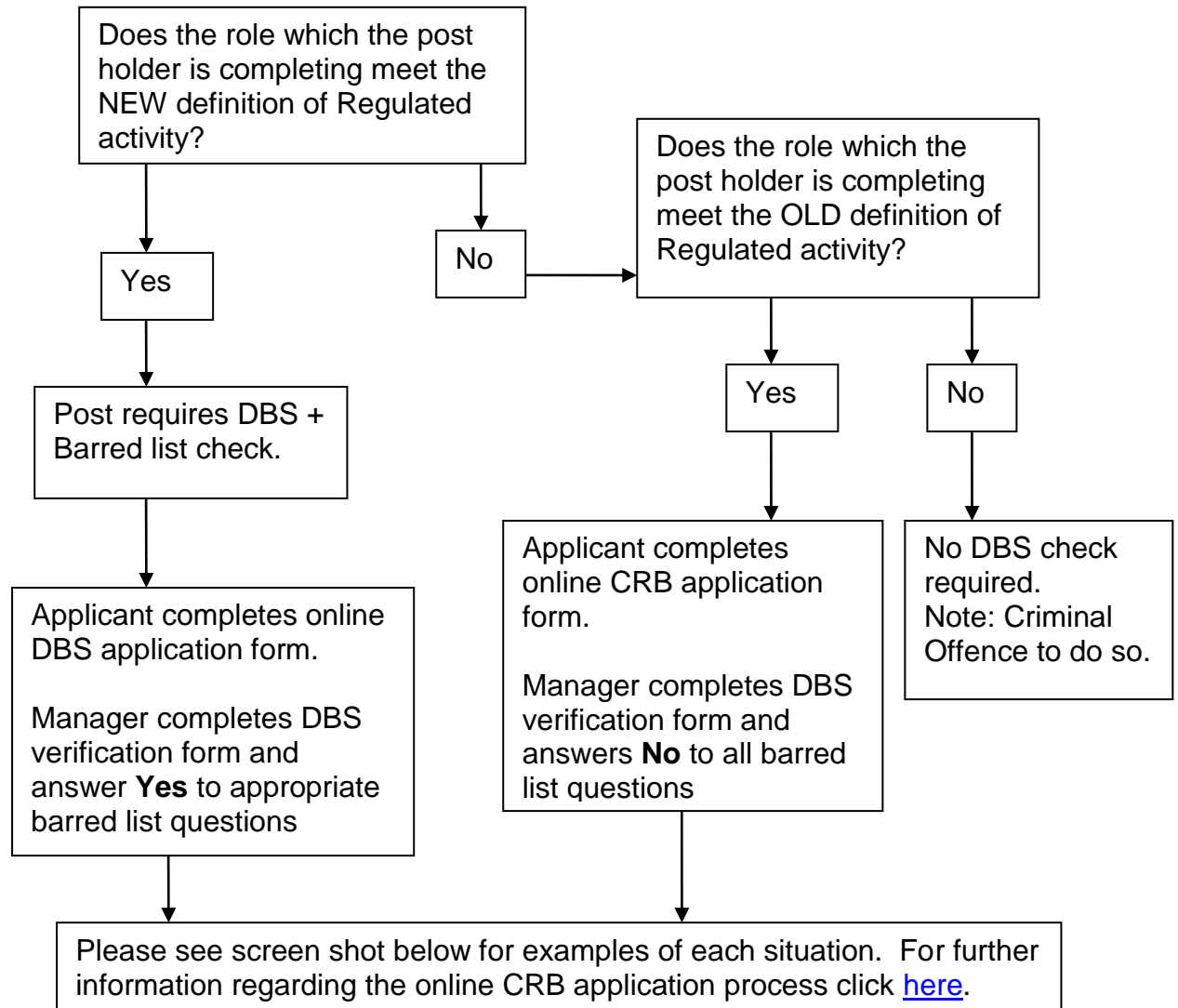
The guidance states that there is only a requirement to check if the frequent / intensive test takes place in a single specified setting.

- Or is a specified role
 E.g. Directors of Children’s services, members of Youth Justice Board, School Governors
- There is no distinction made between paid and voluntary work

Appendix 3 – How to decide what type of DBS check is to be used?

DBS Checking - Manager's Decision Tree

If you are a manager wishing to hire a new recruit or require an existing member of staff to complete a DBS recheck, consider the following:-



Example of Verification form completion for DBS Check + Barred list

CRB Details

Position Applied for / Current Position: **Teacher**

Check Level: **Enhanced**

Have you confirmed the applicants identity? **Yes**

Have you confirmed the applicants current address and previous address history? **Yes**

Is the applicant a free of charge volunteer? **No**

Will the volunteer be supervised? **No**

Will the applicant be working with children (Barred List)? **Yes**

Will the applicant be working with adults (Barred List)? **No**

Only answer 'YES' to the questions above if the position applied for meets the new definition of regulated activity, and the appropriate barred list check is required.

Maximum 30 Characters. If this is for a position that involves voluntary work, you must include a brief description of the role within the title eg. School Volunteer etc....

Please click here to view the new CRB Identity Check guidance.

You are required to verify the applicant's current address details in order to establish their identity. You are required to check the applicant's address history to cover a period of at least 5 years. The purpose is to establish whether the applicant has lived abroad at any time. In this situation, the applicant must provide a certificate of good conduct to cover this period. Please visit www.northyorks.gov.uk/crb for further information.

A volunteer is someone doing something that aims to benefit a third party and not themselves. Any work experience undertaken is not classed as a volunteer etc....

Only answer 'NO' to the questions above if the position applied for meets the new definition of regulated activity, and the appropriate barred list check is required.

Example of Verification form completion for DBS check only

Position Applied for / Current Position: Governor

Check Level: Enhanced

Have you confirmed the applicants identity? Yes

Have you confirmed the applicants current address and previous address history? Yes

Is the applicant a free of charge volunteer? Yes

Will the volunteer be supervised? Yes

Will the applicant be working with children (Barred List)? No

Will the applicant be working with adults (Barred List)? No

Maximum 30 Characters. If this is for a position that involves voluntary work, you must include a brief description of the role within the title eg. School Helper.

Please click here to view the new DBS Identity guidance.

You are required to verify the applicant's current address details in order to establish their identity. You are required to check the applicant's address history to cover a period of at least 5 years. The purpose is to establish whether the applicant has lived abroad at any time. In this situation, the applicant must provide a certificate of good conduct to cover this period. Please visit www.northyorks.gov.uk/crb for further information.

A volunteer is someone doing something that aims to benefit a third party and not themselves. Any work experience undertaken is not classed as a volunteer etc....

Full guidance regarding completing and DBS application and verification process is detailed on the dedicated DBS website:
www.northyorks.gov.uk/dbs

Appendix 4 - Frequently Asked Questions

1. Will the employer still have a duty to refer cases to the DBS?

A. Yes, this duty remains and will continue to do so in the future. It is very important that managers and Head Teachers make prompt referrals. Importantly it is a criminal offence for an employer not to refer to DBS, where the criteria are met.

2. Could you explain the two tier systems of enhanced checks (with and without a barred list check) and how they will work in practice?

A. Those who will be working in regulated activity (meets new definition of regulated activity) will be eligible for enhanced checks with a barred list check, as those posts will be the ones offering unsupervised or regular or close contact with vulnerable groups including children. Those working in an activity which is being removed from regulated activity (but that previously met the old definition of regulated activity), for example in a supervised capacity with children, will still be able to obtain an enhanced check, but without the barred list check.

3. Are cleaners or caretakers etc working in schools still in regulated activity?

A. Yes, if a school is their normal working place they will remain in regulated activity and will require a check.

4. Will everyone who commits the most serious offences still be barred?

A. Not in every instance; those who commit the most serious offences and who work in regulated activity will still be automatically barred for working in regulated activity. Such offences are referred to as 'automatic barring offences without representations'.

However it is not proportionate or necessary to bar anyone who has been barred with representations, or who has been referred to the DBS for consideration of discretionary barring, and who has not worked or is seeking to work in Regulated Activity. There will be circumstances when individuals that have committed a serious offence that are not 'barred' as they are not working in regulated activity. NYCC and Schools will be required to have methods in place for ensuring that our vetting procedures capture these instances, as it will not be a criminal offence for these individuals to apply for regulated activity based work.

5 If people are no longer working in regulated activity, can they ask for barred status to be reviewed?

A. Yes, it maybe possible to have a barred status removed depending on the circumstances of the case.

6. Will volunteers still have free certificates?

A Yes, as now volunteers will not be required to pay for their DBS check.

Appendix 8 DBS - Supervision Guidance

Statutory guidance has now been issued by the DfE on the supervision of activity of those working with children. You are urged to read the full guidance on the DfE website <http://www.education.gov.uk/aboutdfe/statutory/g00213977/supervision-guidance>

A brief summary of the statutory guidance is provided below:

- 1) There must be supervision by a person who is in regulated activity
- 2) The supervision must be regular and day to day (and on an ongoing basis)
- 3) The supervision must be “reasonable in all the circumstances to ensure the protection of children”. In determining what is reasonable schools should consider the following factors:
 - ages of the children, including whether the ages differ widely
 - the number of children the individual is working with
 - whether or not other workers are helping to look after the children
 - the individual’s opportunity for contact with children in school
 - how vulnerable the children are
 - how many workers would be supervised by each supervised worker

What does this mean for us in school?

Schools will need to determine whether or not the level of supervision meets the statutory guidance in order to help establish whether or not an enhanced DBS should also include a barred list check. The flowchart below is provided to help with this determination but if you have any queries contact recruitment@northyorks.gov.uk

