

## Section 9 - Disclosure and Barring Service (DBS)

9 minutes read

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### Requirements

9.1 All posts that fall within the scope of this guidance must have a written role description (see [Section 2: Role Descriptions and Person Specifications](#)) which must define the nature of the activities involved and whether they make the role eligible for a DBS check and, if so, at what level.

9.2 All those who meet the criteria of Regulated Activity<sup>1</sup>, including those on a rota, must have an enhanced DBS check (with/without a check of the barred list/s).

9.3 All those who manage or supervise roles that fall within the scope of this guidance and those in leadership roles, and meet the relevant Regulated Activity criteria, are required to have an enhanced DBS check (with/without a check of the barred list/s).

9.4 If an enhanced or enhanced with barred list/s DBS check is requested, Church bodies must ensure that the role meets the eligibility criteria for this and allows a DBS application to be submitted.

9.5 DBS certificates obtained in previous or other employment/volunteer positions must not be used unless the applicant is registered with the 'DBS Update Service' and the workforce and level of check detailed on his/her most recent DBS certificate meets the requirements for the role for which he/she is being considered.

9.6 The DBS update service must not be used for home-based positions<sup>2</sup> if there is anyone else aged 16 years and over living or working at the applicant's home address.

9.7 For all roles requiring an enhanced or enhanced with barred list DBS check, a re-check must be carried out every 3 years<sup>3</sup>, as a minimum.

9.8 Registered Bodies and those in receipt of DBS Update Service information must fulfil the DBS Code of Practice requirement to have a written policy on the recruitment of ex-offenders in place.

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<sup>1</sup>Further information on the definition of regulated activity can be found on the following pages:

- [New disclosure and barring services - GOV.UK](#)
- [Keeping children safe in education - GOV.UK](#)

<sup>2</sup>Defined by the DBS as "the individual carries out some or all their work with children or adults in their own home; **or** lives in the household of someone who is being or has been DBS checked because they carry out work with children (not adults) in their own home"

<sup>3</sup>Please note that this is a change from House of Bishop Guidance 2016, to bring the Church in line with good practice across the charity/not for profit sector.

# Good practice advice

## Why?

The Disclosure and Barring Service (DBS) is the government agency that provides information about an individual’s criminal record history, in the form of a DBS certificate, helping organisations to make informed recruitment decisions and prevent unsuitable people from working with children, young people and vulnerable adults.

There are 4 levels of DBS Check – Basic<sup>1</sup> , Standard<sup>2</sup> , Enhanced and Enhanced with Barred List(s). Depending on the level of check applied for, a DBS certificate will identify if an individual has any criminal convictions; if they are barred from working with children or vulnerable adults and if the police hold any other relevant information about that person.

DBS Check Level/Information provided	Basic	Standard	Enhanced	Enhanced + Barred Lists
Unspent convictions				
Spent convictions (subject to filtering)				
Cautions (subject to filtering)				
Police intelligence				
Inclusion on children’s barred list				
Inclusion on adult’s barred list				

To be eligible for an “Enhanced” check the role must be in the ROA Exceptions Order 1975 but also MUST be either “work with children” and/or “work with adults” as defined in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended). To be eligible for an “Enhanced check plus barring information” the role must, in addition to the above, be included in the Police Act 1997 (Criminal Records) (No 2) Regulations 2009 (as amended).

Obtaining a DBS certificate must NOT be seen as a substitute for carrying out other safer recruitment checks and processes, or as the end point of the process. The use of DBS checks forms just one part of a comprehensive selection and ongoing management process, as outlined within the guidance Requirements and this Good Practice Advice document.

## How?

## Eligibility

It is essential to ensure that the law allows for a DBS check application to be submitted at the appropriate level. Whilst there is no eligibility requirement for a Basic DBS check, any church body asking an individual to apply for an Enhanced or Enhanced with Barred List/s DBS check has a legal responsibility to ensure that the role is eligible and can explain what parts of legislation support the application. The DBS may require an explanation as to why eligibility exists.

It is a criminal offence for anybody to carry out enhanced or enhanced with barred lists DBS checks on roles that are not eligible. Church bodies that carry out illegal checks may not only be committing an offence under Part V of the Police Act 1997, but are also likely to be in breach of data protection legislation.

- 1In legislative terms, a Basic DBS check is not called a criminal record check but a ‘criminal conviction check’.
- 2Standard checks are not relevant to church bodies/activities as they only relate to certain positions e.g. lawyers, certain FCA positions etc.

## External Resources

- [DBS website](#)
- A guide to DBS checks ([DBS video](#))
- A guide to DBS checks ([DBS pdf](#))
- [DBS Regional Outreach Service](#)
- Further guidance on DBS Eligibility can [be found on the DBS website](#)
- The Christian charity thirtyone:eight also [provide useful guidance in this area](#)
- A flowchart for home-based positions can [be found on the DBS website](#)

## Toolkit

- [DBS Role Eligibility Guidance](#)

## Basic DBS Check

As mentioned above, there are no eligibility requirements attached to Basic DBS checks and their use is left to local determination. Diocesan policy should set out when such checks will be requested, as well as the lawful basis for requesting them from a data protection point of view, and ensure individuals are made aware of this at the start of any application process. The Church of England Confidential Declaration form should not be used for roles where Basic DBS checks are being carried out, as only questions in relation to the information provided on a Basic check (i.e. unspent convictions) can be asked. A revised confidential declaration form would need to be used in this situation, for which legal advice would be required as well as advice from the data protection lead.

## Regulated Activity

It is a criminal offence to appoint someone who is known to be barred from working with children, young people and/or vulnerable adults in 'Regulated Activity'<sup>3</sup>. It is also an offence for a barred person to seek work in Regulated Activity with the group from which they have been barred from working. Church bodies therefore have a responsibility to request criminal record checks on everybody that it is appointing to work or volunteer in Regulated Activity.

- <sup>3</sup>Further information on the definition of regulated activity can be found on the following pages:

<https://www.gov.uk/government/publications/new-disclosure-and-barring-services> and

<https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

## DBS Referrals

The Safeguarding Vulnerable Groups Act 2006 places a duty on organisations where individuals engage in regulated activity to refer to the DBS any person who they have removed (or would have been removed had the person not resigned, retired or left the workplace) from working or volunteering in that activity because they:

- engaged in "relevant conduct" (i.e. an action or inaction (neglect) that has harmed or posed a risk of harm to an adult at risk or a child) OR...
- satisfied the harm test (i.e. there has been no "relevant conduct" but there is still a risk of harm to a child or vulnerable adult) OR...
- received a caution or conviction for a relevant offence, (e.g. a serious sexual or violent offence).

Details about how to refer can [be found on GOV.UK](#).

The DSA/CSA/HR will usually oversee any DBS referrals.

## Use of Third-Party DBS providers

If a church body chooses to use a third-party DBS provider, they must assure themselves that the supplier meets all legislative requirements and appropriate standards of a Registered Body (Enhanced DBS Checks) and/or a Responsible Organisation (Basic DBS Checks). An organisation can be both a Registered Body and a Responsible Organisation

GOV.UK provides an up-to-date list of Registered Bodies and Responsible Organisations who are registered to submit applications for DBS checks, via an online service, on behalf of other organisations. These suppliers guarantee an accurate and honest service, providing information that is in line with the DBS Code of Practice.

Church bodies should not use other non-registered organisations offering the same DBS checking service – such organisations are not permitted to apply for DBS checks on behalf of others.

## Update Service

Disclosure certificates obtained from previous or other employers, or in previous or other voluntary roles, are not portable unless the individual is registered with the 'DBS Update Service' If an individual is subscribed to the DBS Update Service, they must be asked to confirm which workforce (i.e. Child, Adult, Child & Adult, Other) and level of DBS their current DBS certificate is for. If these details meet the requirements of the new role then the DBS Certificate should be viewed and the DBS Update Service accessed to establish if anything has changed since the certificate was issued.

If a candidate is not registered with the DBS Update Service or is registered but his/her existing DBS Certificate is not for the correct workforce or it is for a higher/lower level of check than is required, a new Disclosure Application form must be submitted. As part of the Disclosure Application form process, individuals may be encouraged to subscribe to the annual DBS Update service in order that this can be accessed for any future DBS rechecks, rather than a full application having to be repeated again (although see below in relation to home-based roles).

## Home based roles

If a role is a home based role or has a home based element (i.e. a person will be working with children, young people or vulnerable adults in the place where he/she lives), there must be no one over 16 years of age living or working at the person's home address if the Update Service is to be used. This is because the Update Service will only check for new information which relates to the Update Service subscriber (the individual for whom the original application was made), not the home address where the work is being undertaken or any other individuals employed or living

at that address.

Further details on this can [be found on GOV.UK](#).

## Overseas Criminal Records Checks

The DBS cannot access criminal records held overseas, therefore a DBS check may not provide a complete picture of an individual's criminal record, whether they are a British Citizen or not.

A Certificate of Good Character - also sometimes referred to as 'Certificate or Letter of Good Conduct' - can be requested by an applicant, usually from the home embassy of the country(ies) that they have lived or worked in. The application process for the certificate varies from country to country and up-to-date guidance can [be found on GOV.UK](#).

Where the information cannot be obtained or is not available, the applicant should be asked to provide evidence of their attempt to obtain a certificate and the responsible person should take extra care when taking up references or checking any previous employment record and, in such cases, it would be advisable to seek additional references, as well as actually speak to referees on the telephone. It is acknowledged that if someone has been travelling abroad, e.g. on a gap year where a number of countries would be visited, it will not be possible to obtain the information in this format. Therefore, it is even more important that the references and any previous employment or volunteer experience is verified.

There are companies who carry out overseas checks for many different countries, which may offer a more robust solution to the 'Letter of Good Conduct'.

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