

## **Protocol on Disclosure and Barring Service (“DBS”) Checks for Members and Co-opted Members**

### **Background**

1. The effective date of commencement for this protocol is 1 March 2015.
2. This protocol replaces all previous protocols, policies, decisions and/or precedents relating to criminal records checks for Croydon Members and co-opted members. For these purposes “co-opted members” include both voting and non-voting co-optees where they are sitting on Council Committees or Sub-Committees which exercise education or social services functions, or scrutinise education or social services functions.
3. The definition for regulated activity for children includes:
  - Unsupervised activities e.g. teach, train, care for or supervise children, providing moderating electronic interactive communication used predominantly by children, driving a vehicle used to convey children, or
  - Work in specified places with opportunity for frequent contact with children, like schools, nurseries, children’s homes, childcare establishments or childcare premises which includes premises where childminding and day care take place; or
  - Providers of personal care or health care. Health care or personal care are regarded as regulated activities even if they are only carried out on a single occasion.

Any person who supervises a person undertaking a regulated activity is also regarded as undertaking that regulated activity and any person who supervises a person who is not in a regulated activity (but would be except for the fact that they are supervised) is also in regulated activities
4. The definition for regulated activity for adults no longer labels adults as ‘vulnerable’ but identifies activities which lead to an adult being considered vulnerable at a particular time. The revised definition still excludes any activity carried out in the course of family relationships and personal, non-commercial relationships.
5. The requirement around the activities having to take place in a specified establishment has been removed in respect of adults– it is the activity and not the location which is considered to be relevant.
6. The frequency test has been removed – an individual only needs to engage in the activities below once to be carrying out regulated activity relating to adults.
7. There are 6 categories of job (plus those who manage or supervise them) which fall within the definition of regulated activity for adults:
  - Providing health care
  - Providing personal care
  - Social work in relation to health services or social services
  - Assisting with cash, bills or shopping

- Assisting with personal affairs under formal appointment, for example through power of attorney
  - Transporting adults to and from care provision establishments like hospitals and care homes.
8. Supervised volunteers or occasional workers or visitors (photographers, builders, governors and inspectors who do not have regular contact with vulnerable groups) are no longer required to be checked. Schools are however required to adhere to new statutory guidance issued by the Department of Education relating to standards of supervision.
  9. Health Care not given by a health care professional (or supervised by one) and treatment therapy providers no longer need to be checked.
  10. The DBS now issues a single certificate to the individual and neither the employer or “umbrella body” receive a copy.
  11. The DBS Update Service has introduced portability to Disclosure Certificates. For an annual fee of £13 an individual can subscribe to allow employers to check the status of their DBS certificate online. The employer must be legally entitled to carry out the check; and have the individual’s permission to do so.
  12. Certain DBS checks are carried out in conjunction with a check of the children’s and/or adult’s barred lists. These changes mean that there are now 5 different combinations of checks: standard; enhanced; enhanced plus children’s barred list; enhanced plus adult’s barred list; enhanced plus children’s and adult’s barred lists.
  13. Standard checks – To be eligible for a standard level DBS check the position must be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975.
  14. Enhanced checks – To be eligible for an enhanced level DBS check, the position must be included in both the ROA Exceptions Order and in Police Act 1997 (Criminal Records) Regulations 2002, as amended.
  15. Enhanced checks with children’s and/or adults’ barred list check(s) – To be eligible to request a check of the children’s or adults’ barred lists, the position must be eligible for an enhanced level DBS check and be specifically listed in the Police Act 1997 (Criminal Records) Regulations as able to check the barred list(s).
  16. Attached at Appendix 1 is a non-exhaustive list of occupations that are known as exceptions to the Rehabilitation of Offenders Act 1974 and are accordingly eligible for DBS checking.
  17. Given the revised definitions introduced as a result of the Protection of Freedoms Act there is no legal requirement for a criminal records check on

Members unless it is considered that the Member is undertaking any of the activities listed in paragraphs 3-7 above.

## **General Principles**

18. Those Members of the Council who fall within the categories below are required to undergo enhanced level DBS checks, namely if they are:
  - a Member of a Committee, Sub-committee, Area Committee, Joint Committee or Council Board or Panel which discharges any education functions, or social services functions, of the Council;
  - a Member of the Executive or Committee of the Executive which discharges any such education or social services functions;
  - a Member of a Committee, Sub-committee, Area Committee, Joint Committee or Council Board or Panel which discharges any social services functions of the Council which relate wholly or mainly to vulnerable adults;
  - a Member of the Executive or Committee of the Executive local authority which discharges who discharges any social services functions of the Council which relate wholly or mainly to vulnerable adults;
19. Co-opted members will be required to undergo enhanced level DBS checks if they are members (voting or non-voting) of a Committee (including a Sub-Committee, Area Committee or Joint Committee), Board or Panel which discharges any education or social services function of the Council.

## **The Process**

20. Within two months of the date of commencement of this Protocol and thereafter for newly elected Members within two months of taking office following election, relevant Members will be required to undergo a DBS check. The level of that check will be determined by the role they fulfil and a Member may not be appointed to or sit on any of the Bodies undertaking the roles set out in paragraph 4 above unless they have had the requisite enhanced DBS checks and provided the necessary information to the Monitoring Officer in accordance with this Protocol. In addition, a Member may not act as a substitute or reserve member for another Member on any of the Bodies undertaking the roles set out in paragraph 4 unless they have had an enhanced DBS check and provided the necessary information to the Monitoring Officer in accordance with this Protocol.
21. The outcome of DBS checks is not made available to the Council but only to the individual to whom the check relates. Each individual Member and Co-opted Member will therefore be responsible for making this information available to the Monitoring Officer within 28 days of the date of issue of the DBS certificate, unless the contents of the DBS certificate is disputed and the dispute is raised with the DBS within 28 days of issue of the disputed

certificate. In the latter case the certificate must be provided to the Monitoring Officer within 28 days following the outcome of the dispute.

22. Where the Member or Co-opted Member has an existing up to date DBS Check for another role **and** is signed up to the DBS update service <https://www.gov.uk/dbs-update-service> , their DBS Check details will be regarded as transferrable for the time period for which the update service is valid (1 year) and those DBS details may be provided to the Monitoring Officer in satisfaction of the requirements of this Protocol meaning that the Member will not need a new DBS for these purposes.
23. Any disclosure information will be made available only to the Monitoring Officer and her Deputies and will be kept locked in a secure place to which only the Monitoring Officer and her Deputies will have access. The DBS information shall be securely destroyed once the DBS expires or the Member no longer serves as a Croydon Member or Co-opted Member.
24. Following the receipt of the results of an Enhanced DBS, Party Leaders may ask the Monitoring Officer if there is any reason on the DBS check why a particular Member cannot be appointed to a checkable portfolio/scrutiny position (i.e. a role which falls within the categories set out in paragraph 4 above). In responding to this the Monitoring Officer shall:
  - 9.1 Only answer “yes” or “no” and not go into details; and
  - 9.2 Where the Party Leader requests the details, the Director will not release such details unless there has been prior consent in writing from the Member concerned.
25. Where a Member decides to register a dispute with the DBS regarding the contents of the DBS certificate the Party Leader shall not proceed with the appointment of the Member.

## APPENDIX 1

The Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 provides a list of exemptions to the prohibition on disclosure of previous convictions and cautions. The Exemptions order lists numerous roles, functions and employment in respect of which enquires may legitimately be made.

The revised definition of “regulated activity” was brought into force as a result of the Protection of Freedoms Act 2012. A “regulated activity” is one involving close work with vulnerable groups, including children, which a barred person must not do. The legislation redefines and reduces the scope of regulated activities. Examples of “regulated activity” include being employed in a position that involves regularly undertaking unsupervised activities such as caring for or supervising children, regularly working for certain establishments such as children’s centres, and providing personal care to an adult in a care home or day care centre.

“Regulated Activity” under the Safeguarding Vulnerable Groups Act 2006 immediately prior to the amendment by the Protection of Freedoms Act 2012 includes persons fulfilling the following roles :

In respect of Children (Part 1 Sch 4):

(1)

(a) member of the governing body of an educational establishment mentioned in section 8(5);

(b) member of a relevant local government body;

(c) director of children's services of a local authority in England;

(d) director of adult social services of a local authority in England;

(e) director of social services of a local authority in Wales;

(f) chief education officer of a local authority in Wales;

(g) charity trustee of a children's charity;

(h) member of the Youth Justice Board for England and Wales;

(i) Children's Commissioner or deputy Children's Commissioner appointed under Part 1 of the Children Act 2004 (c. 31);

(j) Children's Commissioner for Wales or deputy Children's Commissioner for Wales;

(k) operator of a database established in pursuance of section 12(1)(a) or (b) or 29(1)(a) or (b) of the Children Act 2004;

(l) member of a Local Safeguarding Children Board established under section 13 or 31 of that Act;

(m) member or chief executive of the Children and Family Court Advisory and Support Service;

(n) a deputy appointed in respect of a child under section 16(2)(b) of the Mental Capacity Act 2005 (c. 9);

(o) member, chief executive or member of staff of DBS.

(2) For the purposes of sub-paragraph (1)(b), a person is a member of a relevant local government body if—

(a) he is a member of a local authority and discharges any education functions, or social services functions, of a local authority;

(b) he is a member of an executive of a local authority which discharges any such functions;

(c) he is a member of a committee of an executive of a local authority which discharges any such functions;

(d) he is a member of an area committee, or any other committee, of a local authority which discharges any such functions.

(3) Any reference in sub-paragraph (2) to a committee includes a reference to any sub-committee which discharges any functions of that committee.

In respect of Vulnerable Adults (Part 2 Sch 4):

(1)

(a) member of a relevant local government body;

(b) director of adult social services of a local authority in England;

(c) director of social services of a local authority in Wales;

(d) Commissioner for older people in Wales or deputy Commissioner for older people in Wales;

(e) charity trustee of vulnerable adults' charity;

(f) member or chief executive or member of staff of DBS.

(2) For the purposes of sub-paragraph (1)(a), a person is a member of a relevant local government body if—

(a)he is a member of a local authority and discharges any social services functions of a local authority which relate wholly or mainly to vulnerable adults;

(b)he is a member of an executive of a local authority which discharges any such functions;

(c)he is a member of a committee of an executive of a local authority which discharges any such functions;

(d)he is a member of an area committee, or any other committee, of a local authority which discharges any such functions.

(3)Any reference in sub-paragraph (2) to a committee includes a reference to any sub-committee which discharges any functions of that committee.