

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

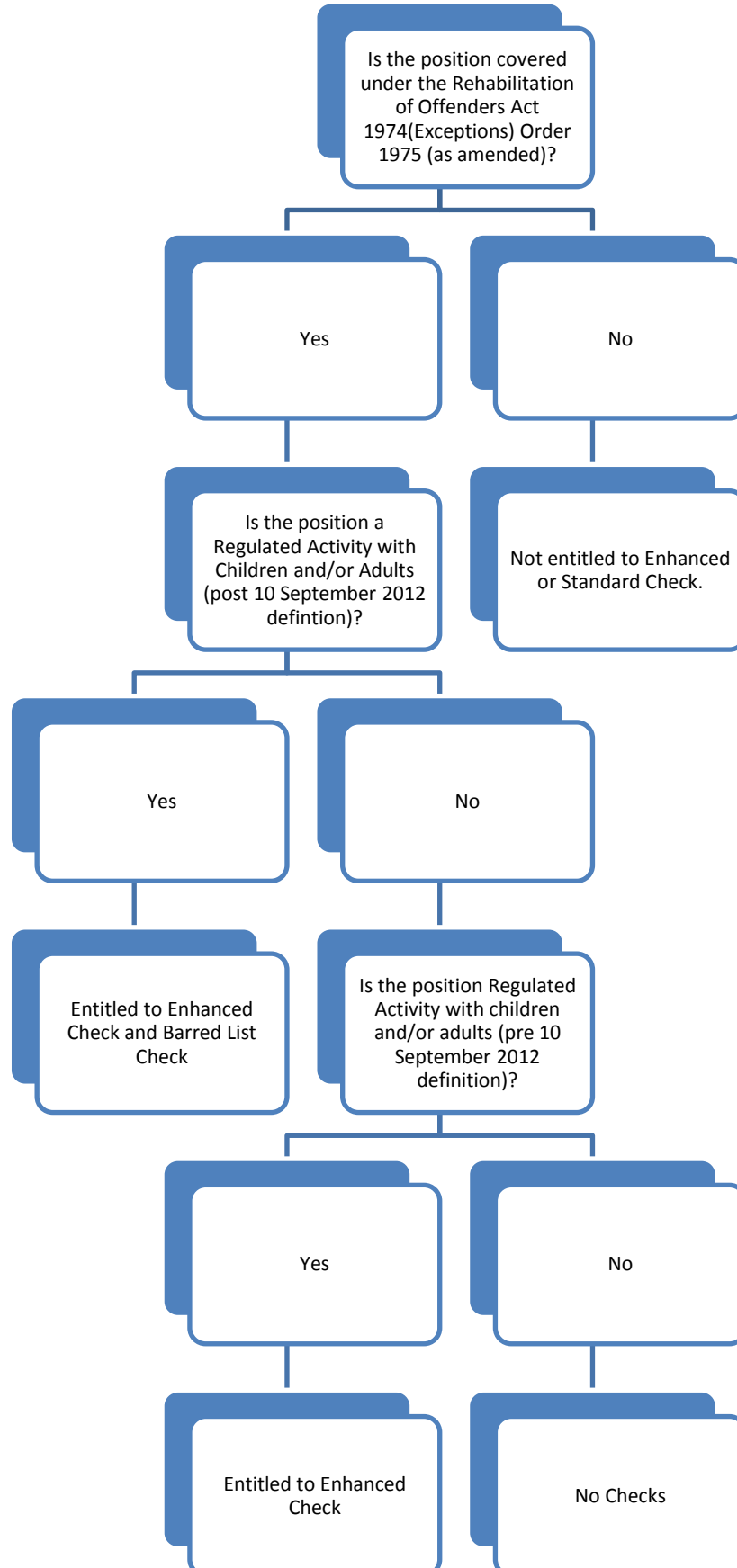
Background

1. The effective date of commencement for this protocol is 1 July 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 child minding 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 Annex 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 2012, 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. There is however the ability to undertake checks where the Member fulfils a role which, prior to the amendment of the Safeguarding Vulnerable Groups Act 2006 on 10

September 2012, would have been defined as Regulated Activity. Relevant extracts from the legislation are included at Appendix 2.

18. Whether or not the Council may request a DBS Check of a Member is summarised in the below table:



General Principles

19. There will not be general DBS checking of all Members as this is no longer permitted by the revised legislative requirements.
20. The Council's Ethics Committee has determined that the Council will however undertake targeted checking of those Members of the Council who fall within the categories below:
 - 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;

on the basis that these positions were previously Regulated Activity with children and/or adults (pre 10 September 2012 definition) - see Annex 2 - and undertaking checks for these roles will accord with the Council's Transparency and Openness agenda and inspire confidence of the Community.

21. 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

22. 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 or Co-opted Member may not be appointed to or sit on any of the Bodies undertaking the roles set out in paragraphs 20 or 21 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 20 unless they have had an enhanced DBS check and provided the necessary information to the Monitoring Officer in accordance with this Protocol.
23. 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.

24. 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.
25. 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.
26. **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 20 above). In responding to this the Monitoring Officer shall:**
 - 26.1 **Only answer “yes” or “no” and not go into details; and**
 - 26.2 **Where the Party Leader requests the details, the Monitoring Officer is not permitted to release such details unless there has been prior consent in writing from the Member concerned, which consent Members may be invited, but not obliged, to give.**
27. 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.

ANNEX 1

Summary: Positions, Professions, Employment, Offices and Works suitable for DBS checking: Extract from DBS guidance

- 1) Any work defined as regulated activity relating to children within the meaning of Schedule 4 Part 1 of the Safeguarding Vulnerable Groups Act 2006
- 2) Any work defined as “work with children” in regulation 5C of the Police Act 1997 (Criminal Records) Regulations 2002
- 3) Any work defined as regulated activity relating to adults within the meaning of Schedule 4 Part 2 of the Safeguarding Vulnerable Groups Act 2006
- 4) Any work defined as “work with adults” in regulation 5B of the Police Act 1997 (Criminal Records) Regulations 2002
- 5) Any office or employment which is concerned with:
 - the provision of care services to vulnerable adults; or
 - the representation of, or advocacy services for, vulnerable adults by a service that has been approved by the Secretary of State or created under any enactment;and which is of such a kind as to enable a person, in the course of his normal duties, to have access to vulnerable adults in receipt of such services
- 6) Any work in a further education institution or 16 to 19 Academy where the normal duties of that work involve regular contact with children
- 7) Health care professional (regulated by a body mentioned in subsection (3) of section 25 of the National Health Service Reform and Health Care Professions Act 2002) – on entry into the profession only
- 8) Barrister (in England and Wales), solicitor – on entry into the profession only
- 9) Chartered accountant, certified accountant – on entry into the profession only
- 10) Veterinary surgeon – on entry into the profession only
- 11) Actuary – on entry into the profession only
- 12) Registered foreign lawyer – on entry into the profession only
- 13) Chartered Legal Executive or other Chartered Institute of Legal Executive (CILEx) authorised person – on entry into the profession only
- 14) Judicial appointments
- 15) The Director of Public Prosecutions and any office or employment in the Crown Prosecution Service
- 16) Designated officers for:
 - magistrates’ courts
 - justices of the peace

- local justice areas
 - justices' clerks
 - assistants to justices' clerks
- 17) Persons employed for the purposes of assisting constables of a Police Force established under any enactment
- 18) Any employment within the precincts of:
- a prison
 - a remand centre
 - a removal centre
 - a short term holding facility
 - a detention centre
 - a Borstal institution
 - a young offenders institution
 - members of boards of visitors (England & Wales)
- 19) Traffic wardens
- 20) Officers of providers of Probation services as defined in section 9 of the Offenders Management Act 2007
- 21) Any employment or other work which is concerned with the provision of health services and which is of such a kind as to enable the holder of that employment or the person engaged in that work to have access to persons in receipt of such services in the course of his normal duties
- 22) Financial Services position – This means all positions for which the Financial Conduct Authority (previously the Financial Services Authority) or the competent authority for listings are entitled to ask exempted questions to fulfil their obligations under the Financial

Services and Markets Act 2000

- 23) Those working within an Authorised Payment Institution as:
- Directors and managers
 - Holders of qualifying holdings
 - Controllers of the Authorised Payment Institution
- 24) Any employment in the Royal Society for the Prevention of Cruelty to Animals (RSPCA) where the person employed or working, as part of his duties, may carry out humane killing of animals
- 25) The Commissioners for Her Majesty's Revenue and Customs (HMRC) and any office or employment in their services
- 26) The Director and any office or employment in the Revenue and Customs Prosecutions Office

- 27) Any employment which is concerned with the monitoring, for the purposes of child protection, of communications by means of the internet
- 28) An individual designated under section 2 of the Traffic Management Act 2004
- 29) The following Court Positions:
- Judges' clerks, secretaries and legal secretaries within the meaning of section 98 of the Supreme Court Act 1981(c)
 - Court officers and court contractors who, in the course of their work, have face to face contact with judges of the Supreme Court, or access to such judges' lodgings
 - Persons who in the course of their work have regular access to personal information relating to an identified or identifiable Member of the judiciary
 - Court officers and court contractors who, in the course of their work, attend either the Royal Courts of Justice or the Central Criminal Court
 - Court security officers and tribunal security officers
 - Court contractors who, in the course of their work, have unsupervised access to court-houses, offices and other accommodation used in relation to the courts
 - Contractors, sub-contractors, and any person acting under the authority of such a contractor or sub-contractor, who, in the course of their work, have unsupervised access to tribunal buildings, offices and other accommodation used in relation to tribunals
 - Court officers and court contractors who exercise functions in connection with the administration and management of funds in court, including the deposit, payment, delivery and transfer in, into and out of any court of funds in court, and regulating the evidence of such deposit, payment, delivery or transfer, and court officers and court contractors who receive payment in pursuance of a conviction or order of a magistrates' court
- 30) The following persons:
- Court officers who execute county court warrants;
 - High Court enforcement officers;
 - Sheriffs and under-sheriffs;
 - Tipstaffs;
 - Any other persons who execute High Court writs or warrants who act under the authority of a person listed at (a) to (d);
 - Persons who execute writs of sequestration;
 - Civilian enforcement officers as defined in section 125A of the Magistrates' Courts Act 1980;
 - Persons who are authorised to execute warrants under section 125B (1) of the Magistrates' Courts Act 1980, and any other person (other than a constable) who is authorised to execute a warrant under section 125 (2) of the 1980 Act;

- Persons who execute clamping orders, as defined in paragraph 38(2) of Schedule 5 of the Courts Act 2003(d).
- 31) Individuals seeking to carry, acquire or transfer prohibited weapons or ammunition under section 5 of the Firearms Act 1968(c) – Maritime armed guards
 - 32) A regulated immigration adviser who provides immigration advice or immigration services under Section 82(1) of the Immigration & Asylum Act 1999(a). This also applies to persons who act on behalf of and are under the supervision of such a registered person
 - 33) Any employment or other work where the normal duties:
 - a) involve caring for, training, supervising, or being solely in charge of persons aged under 18 serving in the naval, military or air forces of the crown; or
 - b) include supervising or managing a person employed or working in a capacity referred to in paragraph (a)
 - 34) Registration as a child-minder agency
 - 35) Any employment or office involved in the management of a child-minder agency
 - 36) A person living at the premises where a child-minding or day care service is provided or who regularly works on the premises at a time when the child-minding takes place
 - 37) A person living in the same household as a person whose suitability is being assessed to work in:
 - regulated activity with children;
 - what would have been regulated activity with children before 10th September 2012;
 - an FE institution or 16-19 Academy where the normal duties of that work involve regular contact with children;
 - and who lives on the same premises where the work would normally take place.
 - 38) Applications for prospective adopters, special guardians or anyone who lives in the adoption or special guardian household in England and Wales
 - 39) Any employment or work in
 - a children's home
 - a residential family centre
 - 40) Any employment or work for the purposes of:
 - an adoption service;
 - an adoption support agency;
 - a voluntary adoption agency;
 - a fostering service;
 - a fostering agency.

which is of such a kind as to enable a person, in the course of his normal duties, to have contact with children or access to sensitive or personal information about children

- 41) Individuals seeking authorisation from the Secretary of State for the Home Department to become authorised search officers
- 42) For the award of public works contracts, public supply contracts and public service contracts in accordance with Directive 2004/17/EC and 2004/18/EC of the European Parliament and of the Council of March 2004(a)
- 43) Football Stewards, supervisors or managers of football stewards
- 44) Approved Legal Services Body Manager
- 45) CILEx approved manager
- 46) Those working for Alternative Business Structures as:
 - Head of Finance and Administration of a licensed body approved under schedule 11 of the Legal Services Act 2007;
 - Head of Legal Practice of a licensed body approved under schedule 11 of the Legal Services Act 2007;
 - Owners of a licensed body approved under schedule 13 of the Legal Services Act 2007.
- 47) Any employment or other work which is normally carried out in premises approved under section 9 of the Criminal Justice and Court Services Act 2000
- 48) Any office or employment which relates to the purposes of National Security
- 49) Any person who has applied to be granted membership of the Master Locksmiths Association
- 50) The Commissioner for Older People in Wales, his deputy and any people appointed by the Commissioner, to assist him in the discharge of his functions or authorised to discharge his functions on his behalf
- 51) Commissioners for the Gambling Commission and any office or employment in their service
- 52) Police and Crime Commissioners

Regulated Activities With Vulnerable Groups – Children & Adults

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 (i.e. the pre- 10 September 2012 position) includes persons fulfilling the following roles:

A. 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.

B. 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.