



UNIVERSITY OF  
**LINCOLN**

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**ACADEMY TRUST**

# **Employment Manual**

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## **Disclosure and Barring Service (DBS) Policy**

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## Introduction

The University of Lincoln Academy Trust is committed to safeguarding the welfare of those accessing their services and has a statutory duty of care towards vulnerable members of society under the Safeguarding Vulnerable Groups Act (2006) and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013. However, this duty must be carried out with due regard to all other relevant legislation including the Protection of Freedoms Act 2012, the Data Protection Act (2018), the DBS Code of Conduct and the Human Rights Act (1998). A description of each piece of key relevant legislation can be found in Appendix F: Relevant Legislation.

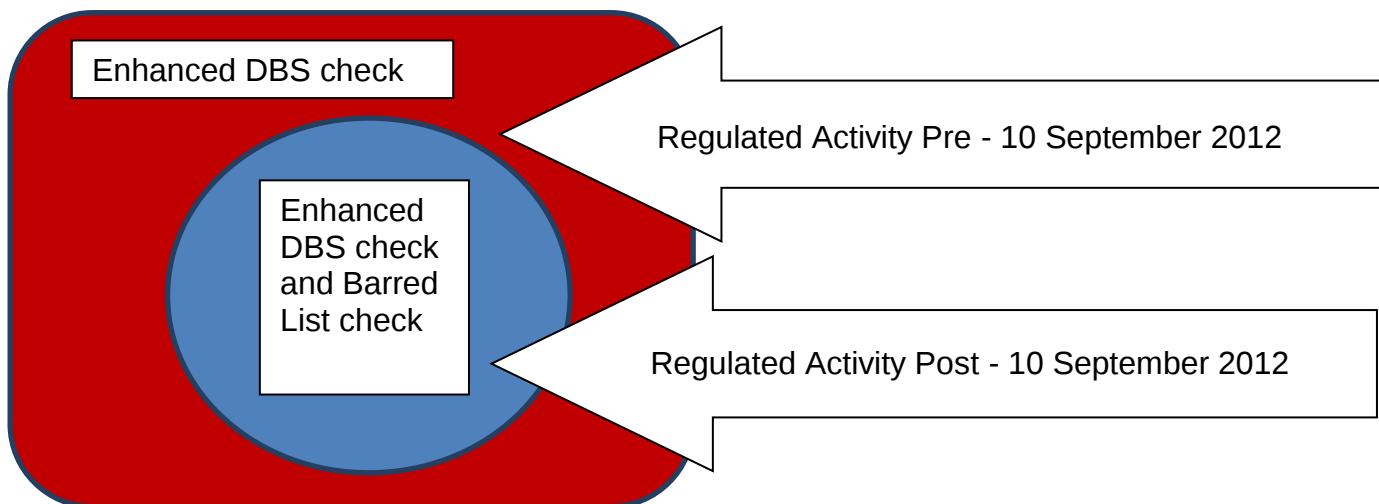
This policy will apply to those seeking paid work or volunteering opportunities with the Academy. In addition, certain types of voluntary or seasonal work, student placements, permitted drivers, Academy governors, preferred contractors and other regulated positions will also come under the provisions of the policy, particularly where they involve unsupervised contact with children.

## Types of DBS Disclosure and Barred List checks

With the merging of the CRB and ISA to form the DBS there has been a change in terminology which will now appear throughout this policy, these are:

| Previous term                                                           | New term                                 |
|-------------------------------------------------------------------------|------------------------------------------|
| Criminal Records Bureau (CRB), Independent Safeguarding Authority (ISA) | Disclosure & Barring Service (DBS)       |
| Enhanced CRB check                                                      | Enhanced DBS check                       |
| Enhanced CRB check with Barred List Check                               | An Enhanced check for Regulated Activity |

The Protection of Freedoms Act 2012 has resulted in a differentiation between those posts which can legally have an Enhanced DBS check and those posts which can also legally be checked against the Children or Adult Barred Lists (an Enhanced check for Regulated Activity). The definition of Regulated Activity was changed on 10 September 2012.



The red square represents the posts that fell within the old definition of Regulated Activity. From 10 September 2012, employees in posts that fall within this area are still entitled to an Enhanced DBS check.

The blue circle represents the new definition of Regulated Activity. There are now fewer posts that fall within this definition. From 10 September 2012, employees in posts that fall within this area are entitled to an Enhanced check for Regulated Activity.

Principal you should begin by looking at Appendix B to establish if a position comes under the post 10 September 2012 definition of Regulated Activity and is therefore entitled to an

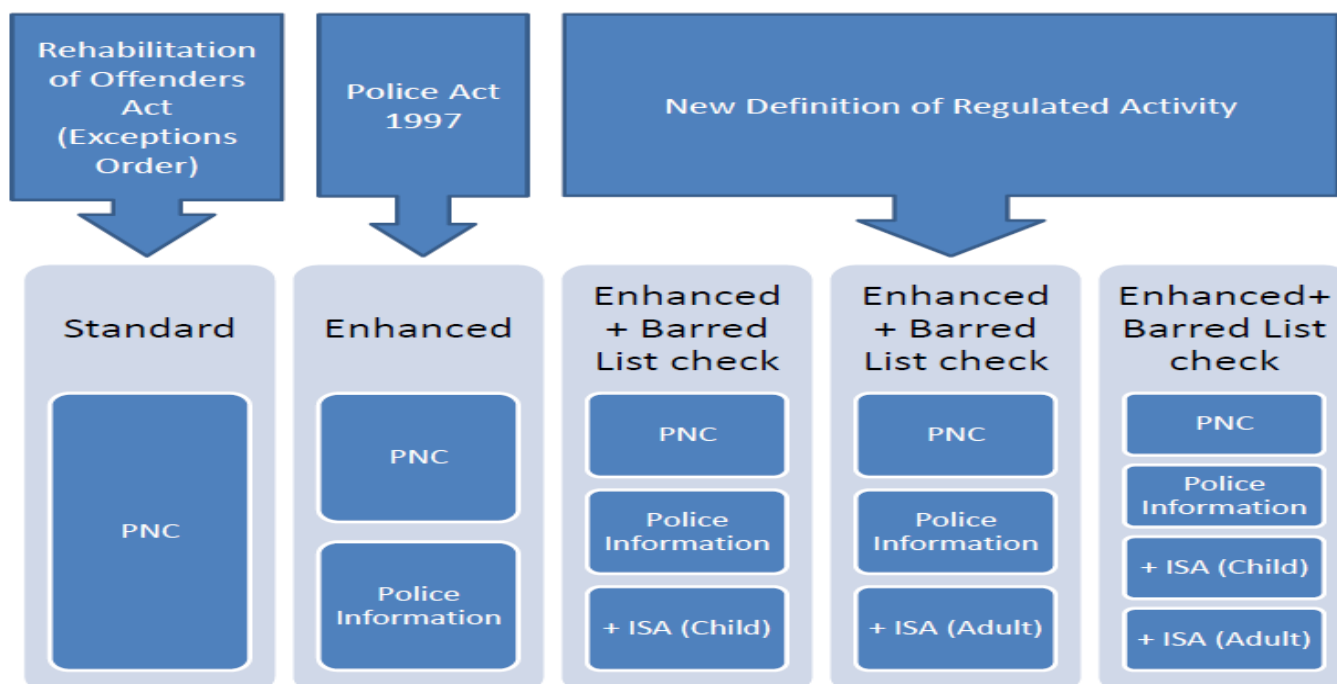
Enhanced check for Regulated Activity. If the position does not come under this definition then turn to Appendix A to establish if the position comes under the pre 10<sup>th</sup> September 2012 definition and is therefore entitled to an enhanced DBS check. If a post does not come under either definition then it is not entitled to a DBS check.

It is an offence for individuals on the Barred List to apply for posts in Regulated Activity. Previously it was illegal for them to apply for all the posts illustrated above. In effect this means that individuals who are currently on the Barred List can now apply for posts that fall under the old definition of Regulated Activity so long as these posts do not fall within the parameters of the new definition of Regulated Activity.

The fact that someone is on the Barred List will not be stated on an Enhanced DBS check, but there will be details of criminal convictions that would indicate that someone might be on the Barred List and the Principal must investigate thoroughly and complete Appendix E: Cause for Concern Risk Assessment Proforma, if any such disclosures are received.

The minimum age that someone can have a DBS check is now 16 years old. The Principal/Governors or DBS Administration team or other provider of this service will not be able to countersign an application for anyone under 16.

### Types of checks available and relevant Legislation (Post September 2012)



### Legal requirements for an Enhanced DBS check

The Academy will ensure the national minimum requirement for Disclosure & Barring Service compliance is met. This requires all those who commenced working in a role exempt from the Rehabilitation of Offenders Act after 1 March 2002 to undertake an Enhanced DBS check.

Ofsted Advice (Inspecting Safeguarding, January 2013) on repeat checks and portability is included as Appendix J. Part of this states:

*The following sets out the current position in relation to schools and colleges and outlines the differences in social care settings as to when checks need to be in place before an employee can start work.*

- DBS checks were strongly recommended for all employees who have regular contact with children if they were employed after March 2002. However, the only requirement for those appointed before this date is that they must have been List 99 checked.
- DBS checks became mandatory for the entire maintained schools' workforce from 12 May 2006 (September 2003 for independent schools, including academies). Employees who took up post from this date must have an enhanced DBS disclosure.
- **No further checks are required** for any staff unless the person has a break in service of more than three months. There is no requirement for staff employed before March 2002 to have retrospective DBS checks as long as they have been in continuous service. In this context, continuity means no break of service of longer than three months. However, prior to 2002, there was a requirement for all staff who work with children and young people to have been checked against List 99, and evidence of this should be checked.

The Academy will only ask for an Enhanced DBS check when it is not an offence under the Police Act 1997 to do so. See Appendix A: Posts requiring an Enhanced DBS check. The Academy is still entitled to ask all post holders in these posts to undertake an Enhanced DBS check but not all these posts are now entitled to a Children or Adult Barred List check (See 1.3 below for further details).

The Academy should ensure that all posts within the Academy have a record identifying whether they:

- Require a DBS check at the start of an employment.
- Require a three yearly DBS check which is for those posts within care.
- Do not require a DBS check.

### **Legal requirements for an Enhanced DBS and Barred List check (Post 10 September 2012)**

Where an individual within a role meets the new definition of undertaking 'Regulated Activity' an application will be made for an enhanced DBS check and a relevant (Adult or Children) Barred List check (an Enhanced check for Regulated Activity). The full, legal definition of Regulated Activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012. For information on the new definition of Regulated Activity and posts for which a check can be made against the barred list, please see Appendix B: Posts requiring an Enhanced check for Regulated Activity (post 10 September 2012 definition).

### **Establishing DBS requirements for a new post**

If the Principal has a new post which they believe requires an enhanced DBS check they should check this with the DBS administration team, who will confirm whether the post is eligible for a DBS check. If the DBS administration team believes it would be illegal to request a DBS check they will ask for the Principal's rationale behind their request and clarify the parameters for which the Exceptions Order can be applied.

Where the Academy uses another provider to undertake this role they will need to make arrangements with them in line with this procedure.

### **Recruitment**

All recruitment will be in line with the Trust's Recruitment, Selection and Induction Policy.

Where a post is identified as one that requires an Enhanced DBS check or Enhanced Check for Regulated Activity all application forms, job adverts and recruitment literature will contain a

statement advising that this will be requested in the event of the individual being offered the position.

Applicants should be made aware that enhanced disclosures might include non-conviction information from local police records if the police 'reasonably believe' the information is relevant to the post in question.

The Academy will make every subject of this process aware of the existence of the DBS Code of Practice.

Where an Enhanced DBS check is to form part of the recruitment process, the Academy will ask all applicants to 'self-disclose' details of their criminal record at an early stage in line with the Rehabilitation of Offenders and Self Disclosure Policy (Appendix L). This information will only be seen by those that need to as part of the recruitment process after shortlisting has taken place. Failure to reveal information that is directly relevant to the position sought may lead to the withdrawal of an offer of employment.

The Academy will not employ someone to work in Regulated Activity with children if they have been barred through the DBS Children Barred list. The Academy would be breaking the law if they did so. Conversely if the Academy receives an application from a person barred from working with children they are breaking the law if they work or volunteer or seek to work or volunteer with children and the Academy will report them to the relevant Authorities.

The Academy will use this process as one part of a range of safeguarding tools for assessing the suitability of preferred candidates, volunteers, contractors, agency workers, those transferring from another school and the continued employment of those in specific roles which require re-checking. Other tools include thoroughly confirming identity, qualifications, taking up and verifying references and examining dates of employment histories on application forms.

All Academy staff that require an enhanced DBS check can now also subscribe to the online update service (DBS Update Service). For individuals this means that if they move to another position with a School/Academy, providing it is with the same workforce that is on their DBS certificate, they will not need another DBS check. Instead the School/Academy will be able to carry out an online status check to ensure that their disclosure is still valid.

For new applicants to the Academy who already have an enhanced DBS certificate for the relevant workforce and who are signed up to the online update service, the Academy will accept the disclosure and carry out an online status check to ensure that their disclosure is still valid.

If applicants internal to the Academy or external applicants are applying for a position within a different workforce (for example where the new work represents a significant increase in responsibility for, and contact with children) then a new DBS check will be required.

Applicants who have worked or been resident overseas for longer than three months within the previous five years, including UK citizens who have worked or lived overseas, require a Statement of Good Conduct. The Academy will request that a Statement of Good Conduct (SOGC) (sometimes referred to as a Certificate of Good Conduct) is provided where one is required. See Appendix G: Statement of Good Repute for further information.

## **Identity checks**

When making an application to the DBS for disclosures, the Principal/Governor will act as the evidence checker (also termed the data checker) of the individual's documents. Full guidelines on the documents that can be used and how to check them is available in Appendix C: Completing an Applicant's DBS Application Form.

## **After recruitment**

As part of an employee's induction, new employees should be made aware of their commitment to safeguarding children. If their role is as a practitioner they should complete the relevant LSCB Safeguarding E-learning programme for children.

Where posts which are entitled to an Enhanced DBS check a Principal/Governor should complete a risk assessment if they have to, for operational reasons, allow someone to work before the enhanced DBS disclosure is returned. In this instance the Principal/Governor must complete Appendix D; Risk Assessment Template and update this once a relevant disclosure is received.

## **Applicants with Adverse Disclosures**

If a DBS check reveals details of convictions which may render the applicant unsuitable for the applied post – termed 'Cause for Concern' - the appointing Principal will discuss the situation with the applicant in line with the DBS Code of Practice and through use and completion of Appendix E: Cause for Concern Risk Assessment Proforma. The applicant will be asked to sign the completed risk assessment to verify the information provided and give permission for the risk assessment to be stored securely and later destroyed in accordance with Appendix H: Policy on the secure storage, handling, use, retention and disposal of disclosures and disclosure information.

When assessing any disclosure or declared conviction information received, consideration will be given to a range of issues and the risk assessment will support the Principal's decision enabling them to assess the suitability of the applicant for their proposed position in light of matter(s) disclosed on their DBS certificate. In some cases the Principal may wish to discuss the information with their HR provider for guidance prior to discussing it with the applicant.

Having a conviction will not necessarily bar someone from employment with the Academy who will only take a criminal record into account when the conviction is relevant. Protection of the applicant's rights and interests must be weighed against the rights and interests of children, employees and the public, including the Academies duties and responsibilities towards these or other groups.

The Principal will not allow personal prejudices to 'cloud' their judgement and good practice. They will consider the relevance of offences and be aware that no two offences are exactly alike e.g. a premeditated burglary that involves extensive damage to property and the physical intimidation of the occupants is different from the opportunist convicted of reaching in through an open window and stealing a purse.

If the candidate has made a false declaration on their application form then the Academy will not be able to confirm the appointment. If the disclosure certificate contains information that was not revealed by the candidate or additional information from the Police is received it will be necessary to hold a further discussion with the candidate and undertake a further review against any risk assessment before deciding to confirm or withdraw the offer of employment. HR and legal advice should be sought at this point.

It is an offence for a barred person to work, apply to work or offer to work in Regulated Activity with a group they are barred from working with. Candidates on the Barred List will not be employed in Regulated Activity by the Academy. If the checks reveal that a candidate is on the Barred List for Regulated Activity the Academy will make a referral to DBS to notify them of the individuals attempt to apply for barred work.

## **Enhanced DBS and Barred List re-checks for employees**

Staff who require a DBS disclosure will have an annual check via the online update service annually.

If a post requires an Enhanced DBS or an Enhanced check for Regulated Activity, the Academy can legally re-check their staff as regularly as they wish to. This will be done through the online update service. If the online status check reveals a change in the disclosure status then a re-check will be required.

Where there are reasonable grounds the Academy may require existing employees to re-apply for an up to date Enhanced Check for Regulated Activities. The Academy reserves the right to ask existing members of staff in relevant positions to apply for a new DBS check if their actions or activities give 'cause for concern'. The grounds for 'cause for concern' could include allegations of suspicious or inappropriate behaviour made by a child or other person or a colleague, parent, carer or member of the public. In such instances, a full investigation of any such allegations will be conducted in accordance with the Academies Disciplinary Policy. As part of the investigation process, the employee may be required to undergo an Enhanced Check for Regulated Activities with consideration and legal advice taken in respect of human rights and employment legislation.

Where, due to changes in legislation, occupational groups become subject to regulation for the first time, the Academy will write to existing employees in those groups informing them of the requirement to obtain an Enhanced DBS and Barred List check. All employees will be expected to comply. Any existing employee refusing to comply with the request for an enhanced DBS Check for Regulated Activities will be advised that their deliberate and unreasonable refusal to carry out lawful and safe instructions issued by a Principal/Governing Body and/or to comply with a contractual agreement will lead to the employee being subject to a disciplinary investigation.

## **Employees with Adverse Disclosures**

Where existing employees, who have not been previously checked, or their post requires a re-check and subsequently have an adverse disclosure result, the Principal/Governor should follow the guidance in section 1.8 Applicants with adverse disclosures and complete Appendix E: Cause for Concern Risk Assessment Proforma and discuss the contents with their HR provider. It may be appropriate to move the employee to an alternative post with no access to children, where this is possible, depending on the nature of the disclosures and pending the outcome of a full investigation. It may be that there are no suitable duties the employee could undertake during this period which do not bring them into contact with children. If this is the case, the Principal must give consideration to suspending the employee on full pay pending the outcome of the disciplinary investigation.

The employee may confirm or refute the information provided by the DBS. Where this is the case the Academy may seek advice from their HR provider to pursue a range of options which may include further checking with the DBS.

When completing Appendix E: The Cause for Concern Risk Assessment Proforma it should be considered whether the conviction is relevant to the post and evidence of previous convictions should not be used to dismiss a person for poor job performance. The track record of the individual should be carefully assessed and if it is satisfactory, this should be considered positively. If the disclosure results are considered to be of a serious nature and prove to be correct the Principal/Governor may consider various options. These include:

- Termination of employment.
- Redeployment pending the availability of a suitable vacancy.

- The introduction of safeguards.

Only after a full appraisal of the situation, including the risks involved and other alternative employment options have been investigated should dismissal be considered and then only after advice from your HR provider. If the Principal/Governor decides to consider termination of employment, then the employee must be informed in writing and a hearing held in line with the Disciplinary Procedure.

If the disclosure results are considered not to be serious and do not impinge on an employee's ability to work in their existing role the line manager should inform the employee accordingly in writing.

## **Data Protection**

The Academy will ensure that sensitive personal information is held securely, and only seen by those entitled to see it in the course of their duties. An Enhanced Check for Regulated Activity and, if applicable, the cause for concern assessment (Appendix E) will only be stored for as long as necessary, and then confidentially destroyed. See Appendix H: Policy on the Secure Storage, Handling, Use, Retention and Disposal of Disclosures and Disclosure Information.

Under Section 124 of The Police Act 1997 it is a criminal offence to pass disclosure information about a spent conviction to anyone who is not entitled to receive it. Serious misuse of a person's criminal record could result in a prison sentence of up to six months or a fine of up to £1,000, or both.

## **Contractors**

The organisation providing the contractor is legally the employer of any contractors and the responsibility to obtain a relevant DBS and Barred List check is theirs. This check can then be used within any organisation that contractors are provided to. If contractors are procured, the Academy will need to satisfy themselves that all Safeguarding requirements have been undertaken.

## **Volunteers**

A volunteer is described as a person who performs an activity which involves spending time unpaid (except for travelling and approved out of pocket expenses) doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives.

Volunteers who assist on a regular basis in a role which meets the parameters for requiring a DBS check are required to undertake a DBS check, and if the role is also classed as Regulated Activity they will be eligible for an Enhanced Check for Regulated Activity. See Appendices A and B.

The disclosure is provided free but there is an internal administrative charge. Some people can be referred to as volunteers but do not actually meet the DBS' criteria to get a free disclosure check. To qualify for a free of charge disclosure, the applicant must not benefit directly from the position the DBS application is being submitted for. The applicant must not:

- Receive any payment (except for travel and other approved out of pocket expenses);
- Be on a placement/work experience;
- Be on a course that requires them to do this job role; and/or
- Be in a trainee position that will lead to a full-time role, post qualification.

Volunteers roles should be properly described under 'role of applicant' on the DBS disclosure form e.g. "volunteer classroom helper".

## **Referral to the Disclosure and Barring Service (DBS)**

The Safeguarding Vulnerable Groups 2006 Act, sets a legal duty for the Academy to refer information to the DBS if they dismiss or remove a member of staff/volunteer from working with children in what is legally defined as Regulated Activity because they meet the referral criteria. The Academy has a duty to refer information to the DBS. See the Policy on Referral to the DBS.

## **Single Central Record**

Following the introduction of new regulations in 2006, Principals are responsible for the establishment and maintenance of the Single Central Record. This is a database of all those employed at the Academy and contains information regarding an individual's vetted status, i.e.:

- Teachers appointed prior to 1978 were only List 99 checked
- Teachers appointed prior to March 2002 were List 99 and police checked
- Teachers appointed after March 2002 were enhanced CRB checked (inclusive of List 99)
- All appointments at the Academy from May 2006 are required to undertake an enhanced CRB disclosure check which includes a check against the Children Barred List, now the DBS Enhanced check for Regulated Activity.
- Those engaged in management roles where they have been Section 128 checked

In line with 'Safeguarding Children and Safer Recruitment in Education (2006)' every effort must be made to obtain an Enhanced DBS and Barred List check for Academy based individuals before they commence working with children. An individual can commence work in the Academy in advance of receiving the DBS disclosure if there is an urgent need for them to do so and the following risk assessments have been undertaken:

## **Risk Assessment**

- The Academy has completed an Appendix D.
- The Academy has undertaken all of the pre-employment checks.
- The Academy has submitted a correctly completed DBS disclosure application form which has been sent to the DBS.
- The individual has been checked against the Children's Barred List.
- The Academy undertakes a risk assessment to determine what appropriate safeguards must be introduced.
- The Academy has introduced sufficient safeguards for the individual not to have unsupervised access to children and;
- The governors and the Principal maintain the 'Single Central Record' which records this.

There is no requirement for routine DBS clearances for governors unless they have a role in the Academy that brings them into Regulated Activity (pre September 2012 definition) or an Enhanced check for Regulated Activity unless they have a role in the Academy that brings them into Regulated Activity (post 10 September 2012 definition).

See Appendix I: Information on the Single Central Record, Volunteers, Supply Staff, Governors and Issues that Ofsted Inspectors will raise at Inspection.

## Gender Recognition Certificates

The Gender Recognition Act 2004 allows transsexual people who have undergone gender reassignment to apply for a gender recognition certificate. When a full gender recognition certificate has been issued, the person is legally considered to be of the acquired gender.

If the person is required to undergo a DBS check as part of the recruitment process they must disclose any previous names and/or gender to the DBS who have established a special application procedure/dedicated contact officer to maintain confidentiality (email: [sensitive@db.sgs.gov.uk](mailto:sensitive@db.sgs.gov.uk) or telephone: 0151 6761452).

Gender confidentiality will be maintained where the individual has no criminal convictions and where there is no other information held by any Police Authority, as a clear disclosure certificate is the ultimate result. However, if they did have convictions under their previous gender that were considered relevant to the post/position, then the individual's gender change would become evident through the provision of conviction information on the DBS disclosure certificate showing both gender names.

## Complaints

Applicants unhappy with any aspect of the DBS process, including the application of this policy, should initially raise their concerns through the Principal or the DBS administration team leader where the Academy uses this service. Where this fails to produce a satisfactory resolution, applicants have the right to complain to the Chair of Governors.

Complaints relating to mistaken identity or the nature of the information given in a criminal record disclosure can only be dealt with by the Disclosure & Barring Service.

## Useful contacts

- Local Authority Designated Officer (LADO for DBS Referral) - 01522 554675

## Further relevant Policy

- Recruitment, Selection and Induction Policy, Toolkit and Forms
- Disciplinary Policy
- Ex-offenders Recruitment Policy

## Appendix A: Posts requiring an Enhanced DBS check (Pre September 2012)

**Note: All of these posts are still entitled to an enhanced DBS check but may not be entitled to a barred list check. Only posts which fall under the parameters of Regulated Activity Post 10 September 2012 are entitled to a Barred List Check (See Appendix B).**

**This Appendix keeps the terminology that was in place pre 10 September 2012. See points 1.1 – 1.4 of the main policy for clarification.**

The enhanced DBS check searches the applicant's details against criminal records and other sources, including the Police National Computer. The check may disclose convictions, cautions, reprimands and warnings. The applicant and the employer will see the results of the search. The DBS check will either confirm that the applicant doesn't have a criminal record, or it will disclose any relevant convictions, cautions, reprimands, warnings and, if applicable, whether the applicant has been barred from working with children and/or vulnerable adults. The police can also include non-conviction information, for example, fixed penalties, that may be relevant. An enhanced DBS check uses a range of different information sources, including the records of:

- The Police National Computer (PNC) and other data sources.
- The Independent Safeguarding Authority.

The Academy will obtain an enhanced DBS check for every employee or volunteer who is involved in regulated activity (pre 10 September 2012 definition) working with children or vulnerable adults. The same principle is also applied to agency workers and contractors/sub-contractors.

An activity is classed as 'regulated' and therefore eligible for an enhanced DBS check if one of the three following criteria is met:

|                                                                                                                                                                                                                                                                            |     |                                                                                                                                                                                                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1) The work is of a Specified Nature – e.g. teaching, training, supervision, advice, treatment, transport.                                                                                                                                                                 | and | Frequently, intensively and/or overnight – once a week for most services, but once a month or more for health and social care services providing personal care, takes place on four days in one month or more, overnight between 2am - 6am. |
| or                                                                                                                                                                                                                                                                         |     |                                                                                                                                                                                                                                             |
| 2) The work is in a Specified Place – e.g. schools, pupil referral units, childcare premises, residential children's care homes, children's centres, adult care homes.                                                                                                     | and | Frequently, intensively and/or overnight – once a week for most services, but once a month or more for health and social care services providing personal care, takes place on four days in one month or more, overnight between 2am-6am    |
|                                                                                                                                                                                                                                                                            | and | Gives that person the opportunity, in consequence of anything he is permitted or required to do in connection with the activity, to have contact with children or vulnerable adults.                                                        |
| or                                                                                                                                                                                                                                                                         |     |                                                                                                                                                                                                                                             |
| 3) The work is in a Specified Role – including fostering and adoption or a 'defined office holders' such as Director of Children's Services, Member of a Local Safeguarding Children's Board, Members of Fostering and Adoption Panels, Member of any committee of a Local |     |                                                                                                                                                                                                                                             |

|                                                                                          |
|------------------------------------------------------------------------------------------|
| Authority that discharges any of that Authority's education or social services function. |
|------------------------------------------------------------------------------------------|

No distinction is made between paid and voluntary work.

There is a fine line of distinction with some posts. A library is not a listed establishment in the Safeguarding Vulnerable Groups Act 2006 and therefore all roles must be assessed on the nature of the duties the individual will carry out, i.e. training, teaching, instructing and supervising children or vulnerable adults. Examples include:

- There is a story time session for the general public. Some people may bring their children along and the children may join in. This is classed as incidental contact with children and the assistant is therefore not eligible for a DBS check.
- There is a story time session for children aged 18 and under. The assistant meets the criteria and is eligible for a DBS check even if the children in the club may differ from week to week.

In summary, activities in a library which are open to the general public are not covered by any exceptions in legislation and, therefore, unless a class or event has been organised wholly or mainly for children or vulnerable adults on a regular basis, the instructor/facilitator would not meet the criteria for a DBS check.

Direct supervisors of staff who require an enhanced DBS check and Barred List check, will also require an enhanced DBS and Barred List check themselves.

Certain posts are not eligible for a DBS check, for example, if an employee has access to sensitive or confidential information such as home addresses, financial details, databases of vulnerable clients or medical information, application for a disclosure does not currently fall within legislation; this is because the employee has no direct contact with children and/or vulnerable adults.

### **What is meant by working regularly?**

The key test is 'frequent' or 'intensive' contact which was clarified in December 2009 by Sir Roger Singleton and the Secretary of State for Children, Schools and Families as:

*"The frequent contact test should be met if the work with children takes place once a week or more. The intensive contact test should be met if the work takes place on four days in one month or more or overnight. Individuals who go into different schools or similar settings to work with different groups of children should not be required to register unless their contact with the same children is frequent or intensive."*

## **Appendix B: Posts requiring an Enhanced Check for Regulated Activity (Post 10 September 2012 definition)**

### **Legislation on the definition of Regulated Activity**

The full, legal definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, as amended (in particular, by the Protection of Freedoms Act 2012). Regulated activity still excludes family arrangements, and personal, non-commercial arrangements.

### **What is meant by working regularly?**

The key test is 'frequent' or 'intensive' contact which was clarified in December 2009 by Sir Roger Singleton and the Secretary of State for Children, Schools and Families as:

*"The frequent contact test should be met if the work with children takes place once a week or more. The intensive contact test should be met if the work takes place on four days in one month or more or overnight. Individuals who go into different schools or similar settings to work with different groups of children should not be required to register unless their contact with the same children is frequent or intensive."*

### **Regulated Activity (Children) - New Definition of Regulated Activity - Children (post 10 September 2012)**

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

1. Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children.
2. Work for a limited range of establishments ('specified places' – see list below), with opportunity for contact, (but not work by supervised volunteers).

Work under 1 or 2 above is regulated activity only if done regularly. Regular means carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period (or in some cases, overnight). Statutory guidance about supervision of activity – currently out for consultation.

- Relevant personal care, for example washing or dressing; or health care by or supervised by a professional, even if done once
- Registered childminding; and foster-carers.
- Regulated activity still excludes:
  - Family arrangements.
  - Personal, non-commercial arrangements.

### **Definition of Supervision**

Supervision must be:

- Regular.
- Day to day.
- Reasonable in all the circumstances for the purpose of protecting the children concerned.
- Carried out by someone who is engaging in regulated activity relating to children.

## Specified Places

- Schools and colleges wholly or mainly for under 18 year olds (all or mainly full-time, for children).
- Pupil referral units (also known as Short Stay Schools) not falling within the above.
- Nursery schools.
- Institutions for the detention of children.
- Children's homes.
- Children's centres in England.
- Childcare premises (including nurseries).

## No longer in regulated activity - children

## Activities

- Activity supervised at reasonable level.
- Health care not by (or directed or supervised by) a health care professional.
- Legal advice.
- "Treatment/therapy" (instead "health care").

## Establishments

- Occasional or temporary services, e.g. maintenance (not teaching etc.).
- Volunteers supervised at reasonable level.

## Office holders (England)

- All "positions" removed, e.g. governors, councillors.
- Inspectorates removed.

## Part 1: Regulated activity in relation to children activities

The activities in the left-hand column are regulated activity in relation to children, subject to:

- Exceptions in the right-hand column;
- Different provisions for "establishments" (specified places) in Part 2 below.

Do not read the left-hand column in isolation from the right-hand column or from Part 2.  
In the right-hand column:

- "New" exceptions are those in the 2012 Act;
- "Existing" exceptions are already in the 2006 Act as amended before the 2012 Act, or in secondary legislation under it.

Changes to Legislation: There are outstanding changes not yet made to the Safeguarding Vulnerable Groups Act 2006, but which are in force.

| Activity                   | Exceptions – not Regulated Activity                                                                                                                   |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| All of regulated activity. | Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity in relation to |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | children. This is the “peer exemption”.                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| In para 2(1) of Schedule 4: of the Safeguarding Vulnerable Groups Act 2006                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>(a) Teaching, training or instruction of children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period, or overnight*.</p> <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised.</p> <p>*Sources:</p> <ul style="list-style-type: none"> <li>- once a week: guidance, March 2010, Annex B, page 70 para B.12;</li> <li>- four or more days/ overnight: Schedule 4, para 10(1) as amended.</li> </ul>                 | <p>New:</p> <ul style="list-style-type: none"> <li>• Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. Para 2(3A).</li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>• Activity relating to a child in the course of his employment, not by a person for whom arrangements exist principally for that purpose.</li> <li>• Activity merely incidental to activity with adults.</li> </ul> |
| <p>b) Care or supervision of children if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight.</p> <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised.</p>                                                                                                                                                                                                                                                | <p>New:</p> <ul style="list-style-type: none"> <li>• Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. Para 2(3B)(b).</li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>• Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.</li> </ul> <p>Activity merely incidental to activity with adults.</p>        |
| Particular types of care within (b) above, which apply to any child, even if done only once: (i) to (ii) below.                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>(i) Relevant personal care. Para 1(1B):</p> <p>(a) physical help in connection with eating or drinking, for reasons of illness or disability;</p> <p>(b) physical help for reasons of age, illness, or disability, in connection with:</p> <ul style="list-style-type: none"> <li>• (i) toileting (including re menstruation);</li> <li>• (ii-iii) washing, bathing, or dressing;</li> </ul> <p>(c)-(d) prompting with supervision, in relation to (a)-(b), where the child is otherwise unable to decide;</p> <p>(e)-(f) other training or advice in relation</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

|                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| to (a)-(b).                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                  |
| <p>(ii) Health care. Para 1 (1C):</p> <p>All forms of health care relating to physical or mental health including palliative care and procedures similar to medical or surgical care.</p>                                                                                                                                                  | <p>New:</p> <ul style="list-style-type: none"> <li>• Health care not by, or directed or supervised by, a health care professional*. Para 2(3B)(a).</li> <li>• *Defined by reference to regulatory bodies. Para 1(1C).</li> </ul>                                                                 |
| <p>(c) Advice or guidance provided wholly or mainly for children relating to their physical, emotional or educational well-being if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight.</p>                                                                       | <p>New:</p> <ul style="list-style-type: none"> <li>• Legal advice. Para 2(3C);</li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>• Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.</li> </ul> |
| <p>(a), (b) &amp; (c): Definition of “overnight”:</p> <p>In relation to teaching, training or instruction; care or supervision; or advice or guidance, it is also regulated activity if carried out (even once) at any time between 2am and 6am and with an opportunity for face-to-face contact with children. Schedule4, Para 10(2).</p> |                                                                                                                                                                                                                                                                                                  |
| Former category (d), treatment or therapy, is now replaced by “health care” provisions.                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                  |
| <p>(e) Moderating a public electronic interactive communication service likely to be used wholly or mainly by children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period.</p>                                                                                                | <p>Existing:</p> <ul style="list-style-type: none"> <li>• Activity by a person who does not have access to the content of the matter, or contact with users.</li> </ul>                                                                                                                          |
| <p>(f) Driving a vehicle being used only for conveying children and carers or supervisors under arrangements as prescribed*, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period.</p> <p>*Prescribed by SI 2009-1548</p>                                                        |                                                                                                                                                                                                                                                                                                  |
| In para 1 of schedule 4:                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                  |
| <p>(3) Early years or later years childminding* with a requirement to register, or voluntary registration, under Childcare Act 2006.</p> <p>*That is: on domestic premises, for</p>                                                                                                                                                        |                                                                                                                                                                                                                                                                                                  |

|                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| reward; as opposed to “childcare premises”, part 2 below.                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                     |
| (5) Fostering** a child.<br><br>**Defined at section 53.                                                                                                                                                                                                                                                                                                              | Existing:<br><br><ul style="list-style-type: none"> <li>Care arranged by family members and not for reward is not regulated activity. Section 53(8).</li> </ul> Local Authority can foster child with barred person who is, or lives with, a relative of the child. <i>S/ 2009-1797, Art 3(2)</i> . |
| <ul style="list-style-type: none"> <li>(14) Day to day management on a regular basis of a person providing a regulated activity in Schedule 4, paragraphs 1(1) or (2) – that is, activity: <ul style="list-style-type: none"> <li>at (a) to (f) above;</li> </ul> </li> </ul> or <ul style="list-style-type: none"> <li>in establishments in part 2 below;</li> </ul> |                                                                                                                                                                                                                                                                                                     |

## Part 2: Regulated Activity in relation to Children Establishments

An activity is regulated activity in relation to children if carried out (subject to exceptions below):

- In one of the following establishments;
- Frequently (once a week or more often), or on 4 or more days in a 30-day period;
- By the same person, engaged in work for or in connection with the purposes of the establishment; and
- It gives the person the opportunity, in their work, to have contact with children.

Day to day management or supervision on a regular basis of a person providing the above regulated activity for children is regulated activity for children.

| Establishment                                                                                                                                                                                                                                                                                                                                                                                                                                       | Exceptions – not Regulated Activity                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Schedule 4, para 3(1) of the Safeguarding Vulnerable Groups Act 2006                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| (a) schools (all or mainly full-time, for children);<br>(aa) pupil referral units (also known as Short Stay Schools) not falling within the above;<br>(b) nursery schools;<br>(d) institutions for the detention of children;<br>(e) & (f) children’s homes;<br>(fa) children’s centres in England;<br>(g) Childcare premises (including nurseries).<br>Day to day management or supervision on a regular basis of a volunteer activity which would | New:<br><ul style="list-style-type: none"> <li>Activity by person contracted (or volunteering) to provide occasional or temporary services (not teaching, training or supervision of children). <i>Para 1(2A) &amp; (2B)(a)</i>;</li> <li>Volunteering, under day to day supervision of another person engaging in regulated activity. <i>Para 1 (2B)(b)</i>.</li> </ul> Existing:<br><ul style="list-style-type: none"> <li>Activity by a person in a group assisting or acting on behalf of, or under direction of another person engaging in regulated</li> </ul> |

|                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>be regulated if unsupervised. <i>Para 1(15).</i></p> | <p>activity;</p> <ul style="list-style-type: none"> <li>▪ Childcare premises which are the home of a parent etc. of at least one child to whom the childcare or child minding is provided;</li> <li>▪ For activity undertaken regularly in a number of different establishments, but only infrequently in each: each establishment is only arranging the activity infrequently, so each establishment is not a regulated activity provider in relation to that activity.</li> </ul> |
|---------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Note: Categories for office holders ("Positions" - Para 1(9) and Para 4) and for Inspectorates in England (sub-paragraphs of Para 1) are removed.

## Appendix C: Completing an applicant's DBS application form

Academies who use other providers for this service will, need to contact them directly.

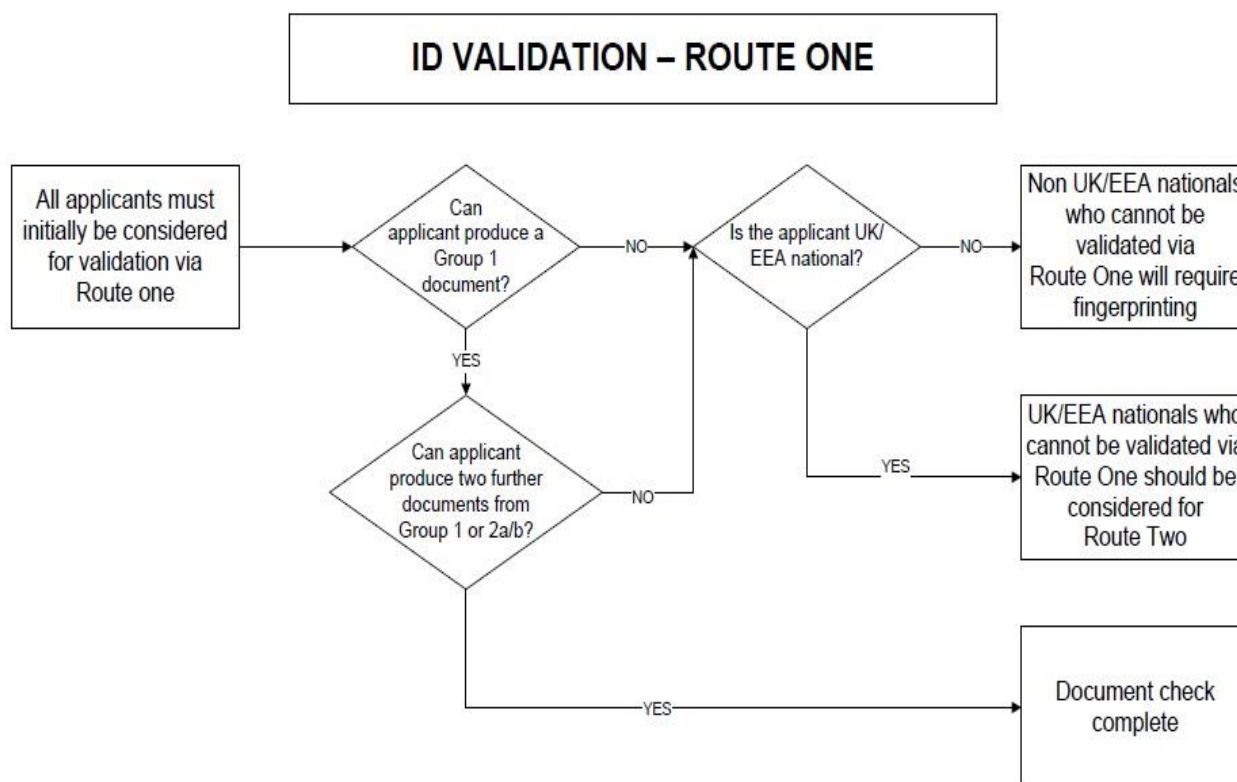
### Verifying applicant's identity

The applicant must provide a range of ID documents as part of the DBS application process. Registered Bodies must:

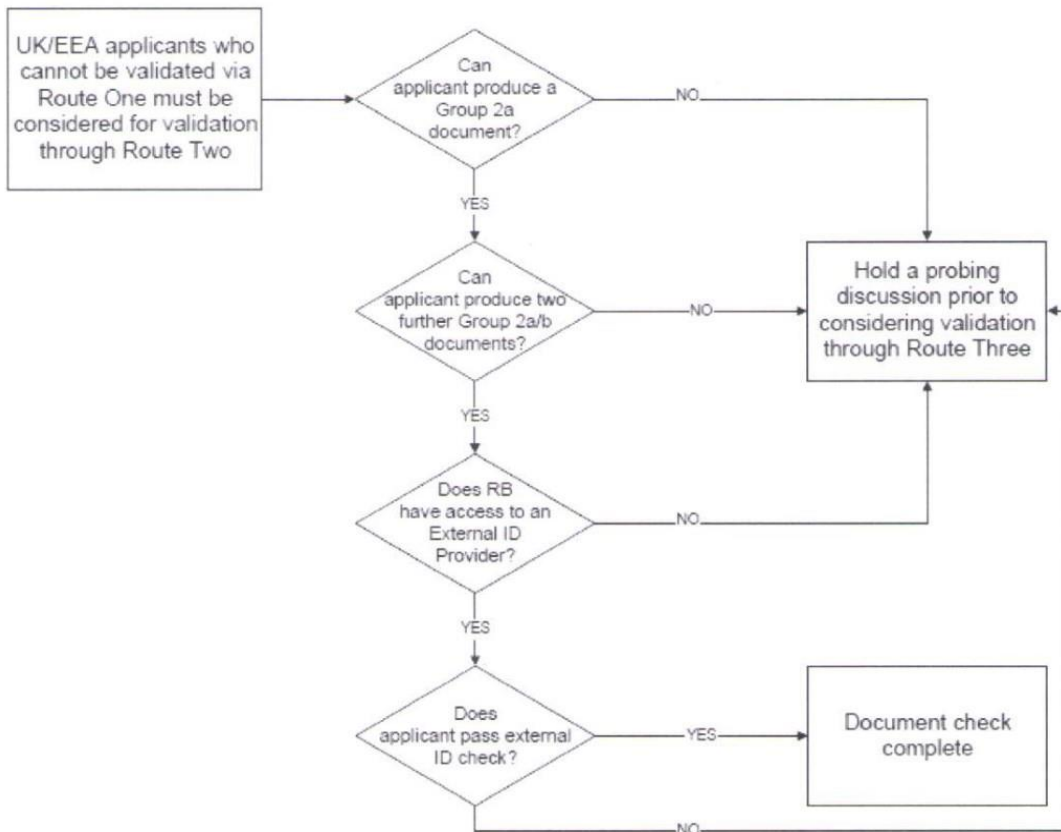
- Follow the three route ID checking process as outlined in the guidance using the list of Groups 1; 2a and 2b documents.
- Check and validate the information provided by the applicant on the application form/continuation sheet.
- Establish the true identity of the applicant through the examination of a range of documents as set out in this guidance.
- Ensure that the applicant provides details of all names by which they have been known.
- Ensure that the applicant provides details of all addresses where they have lived in the last five years.
- Ensure that the application form is fully completed and the information it contains is accurate.

A full guide to checking identity, what documents to check and how to check them is available from the DBS website at:

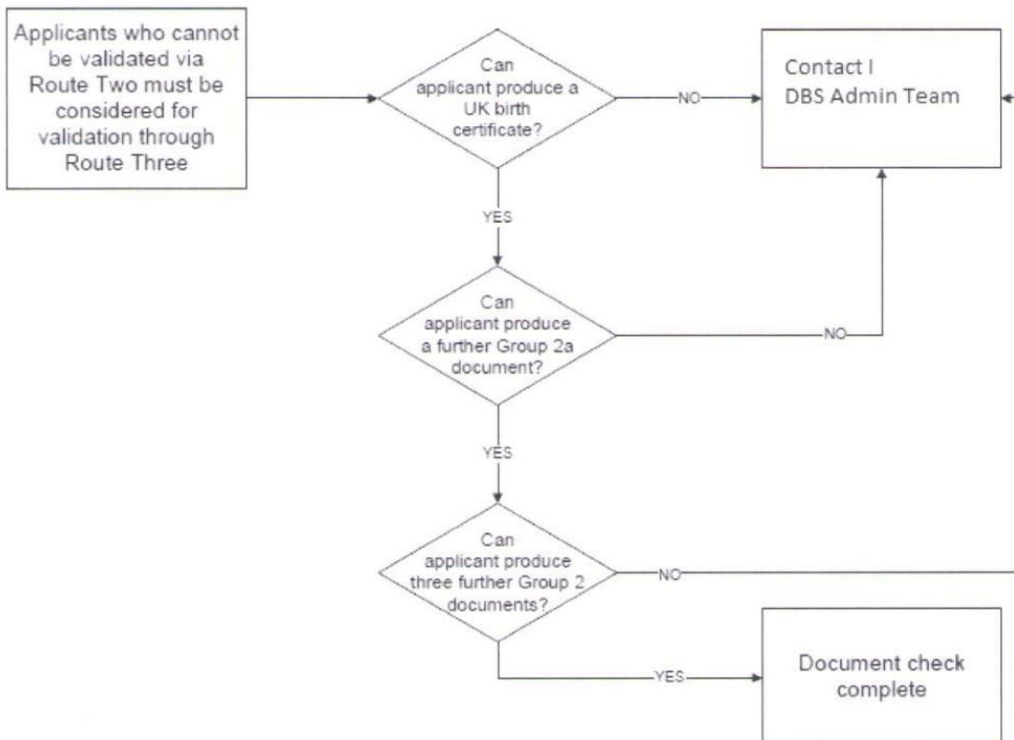
<https://www.gov.uk/government/publications/dbs-identity-checking-guidelines>



## ID VALIDATION – ROUTE TWO



## ID VALIDATION – ROUTE THREE



### **Where to send your DBS form**

When you are satisfied the applicant has correctly and clearly completed all relevant parts of the DBS application form, and you have completed Parts X & Y in accordance with the guidelines you received from the DBS Admin Team, please complete the identity checking verification form indicating the documents you have seen to verify identity, and providing the details of where you want the outcome for the application to go to.

### **Identity checking verification form**

When you are satisfied that the applicant has correctly and clearly completed all relevant parts of the DBS Application Form in accordance with the guidelines provided, and you have completed Parts X & Y, again in accordance with the guidelines.

## Appendix D: Risk Assessment Template – Employees starting work before an enhanced DBS Check is returned

Please complete this form fully as it will form the basis of a decision to appoint/not to appoint someone into a position subject to it.

**If a Barred List check is not applicable for this role, approval for allowing an applicant to start, based on the completion of this risk assessment must be approved by the appropriate Principal.**

Name of Person Completing Form: .....

Name of Applicant: .....

Position Applied For: .....

Academy: .....

Date of Risk Assessment: .....

| Questions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Comments |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Is this post eligible for a Barred List Check?<br><i>If 'No', then sign off will be required by an appropriate Principal on the completion of this form before the applicant may start in role.</i>                                                                                                                                                                                                                                                                                                                                                                                                                             | Yes No   |
| Has the Barred List check been undertaken if applicable? See <a href="#">Appendix B</a> to determine if applicable. If it is applicable and the answer here is 'no' then this must be undertaken – contact DBS Administration Team                                                                                                                                                                                                                                                                                                                                                                                              | Yes No   |
| Is the applicant barred from working with Children/Adults? If 'Yes' end process now.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Yes No   |
| Have all Pre-employment checks been undertaken including <ul style="list-style-type: none"> <li>References checked and verified.</li> <li>Application form checked and all breaks in employment and or training are accounted for.</li> <li>Identity has been validated.</li> </ul>                                                                                                                                                                                                                                                                                                                                             | Yes No   |
| Has a correctly completed DBS check application form been sent to DBS?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Yes No   |
| What level of and how much supervision is available to the applicant from an appropriately qualified and experienced member of staff?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |          |
| Can any safeguards be implemented to reduce/remove any risk e.g. no unsupervised contact?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Yes No   |
| Has the applicant advised of any disclosures that the DBS check will show? If so, what is the impact of these – see <a href="#">Appendix E</a> : Cause for Concern Risk Assessment Proforma.                                                                                                                                                                                                                                                                                                                                                                                                                                    | Yes No   |
| Any questions/additional comments from the applicant?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |          |
| <p>Declaration by applicant and any additional comments in support of an employee starting work before an enhanced DBS check is returned:</p> <p>I understand that if I am allowed to start work before my enhanced DBS check is returned it is subject to the information I have supplied and that this is complete and correct. False information, or a failure to supply the details required could lead to termination of employment.</p> <p>Declaration by applicant and any additional comments in support of an employee starting work before an enhanced DBS check is returned:</p> <p>Signature: ..... Date: .....</p> |          |

Additional comments:

Signature: ..... Date:

.....

Outcome of Risk Assessment (delete as appropriate:

Allow employee to begin before the enhanced DBS is returned?

Yes

No

Please state (if applicable) whether approval is dependent upon conditions being met, such as recommendations, restrictions or safeguards to be implemented by the employing Academy.

Name of Authorising Officer:

.....

Signature of Authorising Officer:

.....

I have considered the content of this risk assessment and give approval for the applicant to start in position, with the safeguards set out above put in place, prior to the return of an enhanced DBS check.

Name of Principal: .....

Signature of Principal: .....

Date: .....

## Appendix E: Cause for Concern Risk Assessment Proforma

Please complete this form fully and discuss with an HR Provider, as it will form the basis of a decision to appoint/not to appoint someone into a position where adverse disclosures have been identified on a returned DBS check.

Name of Principal: .....

Name of applicant: .....

Name of HR Adviser: .....

Position applied for: .....

Academy: .....

Date of Risk Assessment: .....

| Questions                                                                                                                                                                                                         | Comments |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Does the applicant meet all the essential criteria for the post in terms of skills, knowledge, experience and ability?                                                                                            |          |
| Does the applicant agree that the information detailed on the DBS certificate is correct?<br>In the event of a challenge from the applicant the matter needs referring to the disputes team at the DBS.           |          |
| The country in which the offence was committed e.g., some activities are offences in Scotland and not in England and/or Wales and vice versa.<br>Whether the offence has since been decriminalised by Parliament. |          |
| What was the nature of the crime, when did the relevant offence(s) occur e.g. less/more than two years ago, what were the circumstances involved and what was the sentence?                                       |          |
| Do the matters disclosed form any pattern? Was the offence a one-off, or part of a history of offending e.g. is the offence likely to re-occur?                                                                   |          |
| What is the seriousness of the offence(s) and relevance to the safety of other employees, customers, service users and property?                                                                                  |          |
| Are there any assessments and reports from those agencies involved in the applicant's process of rehabilitation e.g. probation service, specialists working in prison, other agencies?                            |          |
| Are the type and/or nature of the offence(s) directly relevant to the post?                                                                                                                                       |          |
| What is the nature of the contact the applicant will have with children/adults/the public and how vulnerable are they? If working with adults, will the applicant have access to finances or to items of value?   |          |
| Was the relevant offence committed at work (either paid or unpaid work)? Does the job present any opportunities for the applicant to re-offend in the place of work?                                              |          |
| Did the applicant declare the matters on the DBS                                                                                                                                                                  |          |

|                                                                                                                                                                                                                                                                        |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| disclosure application form and/or the job application form?                                                                                                                                                                                                           |  |
| Are there any mitigating circumstances e.g. any relevant information offered by the applicant about the circumstances that led to the offence being committed e.g. the influence of domestic or financial difficulties?                                                |  |
| Has the applicant's circumstances changed since the offence was committed, making re-offending less likely (e.g. improved personal circumstances, drug addiction therapy etc.). Can the applicant demonstrate any efforts not to re-offend? i.e. rehabilitation course |  |
| Would the applicant do anything differently now - has their motivation changed? Does the individual regret the matter (degree of remorse) and what is their attitude towards the matters now?                                                                          |  |
| What level of and how much supervision is available to the applicant?                                                                                                                                                                                                  |  |
| Can any safeguards be implemented to reduce/remove any risk e.g. no unsupervised contact?                                                                                                                                                                              |  |
| Any questions/additional comments from the applicant?                                                                                                                                                                                                                  |  |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Declaration by applicant and any additional comments in support of their employment</p> <p>I understand that any offer of employment will be subject to the information I have supplied and that this is complete and correct. False information, or a failure to supply the details required could make an offer of employment invalid or lead to termination of employment. I understand that this proforma will be held securely for 25 years from the date of the assessment if appointed/6 months if not appointed. It will only be accessed if a) Regulatory/enforcement organisations ask for clarification on this recruitment decision, or b) any allegations are made against me during the course of my employment with the Academy, where an investigation</p> <p>Signature: ..... Date: .....</p> <p>Name: .....</p> |
| <p>Additional comments:</p> <p>Signature: ..... Date: .....</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>Outcome of Risk Assessment (delete as appropriate):</p> <p>Continue with offer of employment / withdraw offer of employment</p> <p>Please state (if applicable) whether approval is dependent upon conditions being met, such as recommendations, restrictions, safeguards to be implemented by the employing Academy.</p> <p>Name of Principal: .....</p> <p>Signature of Principal: .....</p>                                                                                                                                                                                                                                                                                                                                                                                                                                   |

## Appendix F: Relevant Legislation

F.1 - The Safeguarding Vulnerable Groups Act (2006)

F.2 - The Rehabilitation of Offenders Act (1974)

F.3 - Exceptions Order to the Rehabilitation of Offenders Act (1975)

F.4 - The Protection of Freedoms Act (2012)

F.5 - The Data Protection Act (2018)

F.6 - The Disclosure & Barring Service and the DBS Code of Practice

F.7 - The Human Rights Act (1998)

### Introduction to the Legislation

The Academy is committed to safeguarding the welfare of those accessing our services and has a statutory duty of care towards vulnerable members of society under the Safeguarding Vulnerable Groups Act (2006) and the Exceptions Order to the Rehabilitation of Offenders Act (1975). However, this duty must be carried out with due regard to all other relevant legislation including the Rehabilitation of Offenders Act (1974), the Data Protection Act (2018), the DBS Code of Conduct and the Human Rights Act (1998). In effect the Academy needs to balance the legislation carefully to ensure we recognise the rights of ex-offenders and remain within the legal requirements of the law whilst meeting our Safeguarding responsibilities.

The Safeguarding  
Vulnerable Groups Act  
(2006)  
Exceptions Order to the  
Rehabilitation of Offenders  
Act (1975)

The Protection of Freedoms Act  
(2012)  
The Rehabilitation of Offenders  
Act (1974)  
The Data Protection Act (2018)  
The DBS Code of Conduct  
The Human Rights Act (1998)

VS



### The Safeguarding Vulnerable Groups Act (2006)

The Safeguarding Vulnerable Groups Act (2006) provides the legislative framework for the new Vetting and Barring scheme (VBS). In summary the Act allows for the Disclosure and Barring Service (DBS) to make all decisions about who should be barred from working with children and vulnerable groups. The DBS will consider those activities that are classified as 'regulated'. These activities include both paid and unpaid (voluntary) work. This Act has been superseded to a degree by the Protection of Freedoms Act (2012). Regulated Activity based upon the SVA can be seen under **Appendix A: Posts requiring an enhanced DBS check (pre 10 September 2012 definition)**.

### The Rehabilitation of Offenders Act (1974)

The Rehabilitation of Offenders Act (1974) (ROA) ensures those people who have been convicted of a criminal offence in the past are not discriminated against when seeking appropriate employment. After a certain period of time certain (not all) convictions will become 'spent' which means a person no longer needs to disclose these to potential employers. However there are a number of professions and posts where the ROA is 'over ridden' by the Exceptions Order to the Rehabilitation of Offenders Act (1975) – see below.

## **Exceptions Order to the Rehabilitation of Offenders Act (1975)**

Various kinds of employment, occupations and professions are 'exempted' and this Exceptions Order to the Rehabilitation of Offenders Act (1974) overrules the employment rights an ex-offender would otherwise have in respect of 'spent' convictions. Ex-offenders have to disclose information about spent and unspent convictions provided the employer states clearly on the job advert and literature and the application form that the job applied for is exempted. These posts are those where it is legally permissible to ask an applicant to complete an enhanced DBS check (which discloses information on all spent and unspent convictions). **Appendix A: Posts requiring an enhanced DBS check (pre 10 September 2012 definition)** and **Appendix B: Posts requiring an enhanced check for regulated activity (post 10 September 2012 definition)**.

## **The Protection of Freedoms Act (2012)**

The Protection of Freedoms Act (2012) makes a number of amendments to the vetting and barring scheme under the Safeguarding Vulnerable Groups Act (2006), which are in force from 10 September 2012. The 2012 Act introduces a new definition of "regulated activity" in relation to children and adults and the activities covered. See **Appendix B: Posts requiring an enhanced check for regulated activity (post 10 September 2012 definition)**.

## **The Data Protection Act 2018 and General Data Protection Regulations**

Under the Data Protection Act 2018 and General Data Protection Regulations the Academy has a duty to ensure confidentiality of all information – including where all information will be processed, handled and stored appropriately and used only for its proper purpose. Individuals have, amongst other rights, the right to see their own personal data subject to the rights of confidentiality of any third parties involved in that information and will receive their own copy of the Enhanced DBS check certificate.

## **The Disclosure & Barring Service and the DBS Code of Practice**

The 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). Its primary role is to help employers in the public, private and voluntary sectors identify individuals who may be unsuitable for certain types of work, especially that involving contact with children or other vulnerable members of society, by providing controlled access to criminal records and related information through its Disclosure service.

The Code of Practice is produced by the Disclosure & Barring Service and all staff, Members, Partnerships, Agencies and Contractors must abide by its contents. The Code is published under section 122 of the Police Act 1997 in connection with the use of information provided to registered persons (Disclosure information) under Part V of that Act.

It is a requirement of the DBS Code of Practice that all Registered Bodies must treat applicants who have a criminal record fairly and not to discriminate because of a conviction or other information revealed. The DBS is empowered to refuse to issue a disclosure if it believes that a registered person, or someone on whose behalf a registered person has acted, has failed to comply with the Code of Practice. This code can be accessed at: [DBS Code of Practice](#).

## **The Human Rights Act (1998)**

Under the Human Rights Act anyone who believes their rights as set out in the European Convention on Human Rights have been violated by a Public Authority is able to raise their complaint before a UK court. Principals/Governors should therefore be aware of the possibility of legal challenge from ex-offenders who believe their rights have been violated under Article 14

of the Act, which guarantees freedom from discrimination and also Article 8 of the Act, which provides for Right to Respect for Private and Family Life.

Equally, they should be aware that victims of physical/verbal/sexual abuse caused by employees known to have a criminal record might also seek legal challenge on the grounds that the organisation failed to protect them sufficiently. In order to avoid prosecution by the courts, the Academy needs to apply policies in such a manner that ensure vulnerable people are protected but at the same time treat ex-offenders fairly.

## Appendix G: Statement of Good Conduct

The DBS can only access criminal records held on the Police National Computer and this does not hold details of convictions, cautions, reprimands or warnings from outside the United Kingdom. An enhanced DBS check will not provide details of an overseas criminal record that may, or may not exist. All persons who are appointed to a post requiring an enhanced DBS check must however undergo a DBS check regardless of their length of stay in the UK even if they have never been resident.

All new arrivals to the UK must provide, in addition to all documentation in relation to the immigration requirements, and DBS requirements, a Statement of Good Conduct (SOGC). The definition of new arrival is an applicant who has worked or been resident overseas in the previous five years for a period of more than three months and this includes citizens of the UK who have worked or lived overseas.

It is preferred that the SOGC is obtained via the relevant UK embassy of every country in which residency or employment is relevant. The applicant is responsible for acquiring this. The Principal should request that the applicant obtains the SOGC in English or costs may be incurred for translation. This document should be considered along with the internal risk assessment process and all other employment checks before taking a decision regarding appointment. It is recommended therefore that prospective candidates are advised that they should obtain their SOGC prior to application or at least before interview. SOGC from the appropriate UK embassy can be authenticated by contacting that embassy.

References must be obtained from previous employers and in the case of those seeking to work with children and/or adults, one of these references should be from the last employer where the individual worked with clients. In addition particular care must be taken with the usual range of other pre-employment checks such as confirming identity, qualifications, verifying right to work in the UK and employment medical questionnaires.

Some countries do not provide SOGC. The unavailability of an applicant's SOGC may give cause for concern about his or her suitability to be offered employment in a position of trust. Although such candidates will not be barred from working for the Academy, appointing officers must make their final recruitment decision with due regard to all the relevant facts, the risk assessment and the overall requirement to protect vulnerable groups. Any decision not to appoint must be carefully explained to the candidate and reassurance given about the reasons for it.

Many countries have provided details of how to apply for certificates of Good Conduct and/or criminal record certificates and these can be found here

<https://www.gov.uk/disclosure-barring-service-check/arranging-checks-as-an-employer>

Employers should continue to check with the relevant embassy as processes for obtaining these checks and certificates vary between countries. A list of contact details for London based embassies can be found at: <https://www.gov.uk/govtment/publications/foreign-embassies-in-the-uk>

## **Appendix H: Policy on the secure storage, handling, use, retention and disposal of Disclosures and Disclosure Information**

The Academy complies fully with the DBS code of practice regarding the correct handling, use, retention and disposal of disclosures and disclosure information. It complies fully with its obligations under the Data Protection Act and other relevant legislation.

Disclosure information is never kept on an applicant's personnel file and is always kept separately and securely, in lockable, non-portable, storage containers with access strictly limited to those entitled to see it as part of their duties.

A photocopy of the "top portion" of the disclosure certificate and/or online update check is retained on the personnel file of the individual. This is to avoid a situation where on an original there could be conviction information on the reverse side. Additionally there should be no indication of the existence of "additional information to follow" in the top right hand corner (this is a reference indicating that additional information is to be forwarded by a Chief Police Officer).

In accordance with section 124 of the Police Act 1997 disclosure information is only passed to those who are authorised to receive it in the course of their duties. The Academy maintains a record of all those to whom disclosure or disclosure information has been revealed and we recognise it is a criminal offence to pass this information to anyone who is not entitled to receive it.

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

Once a recruitment decision or other relevant decision has been made we do not keep disclosure information for any longer than is necessary and they are destroyed confidentially after six months which allows for consideration and resolution of any disputes or complaints. In exceptional circumstances it may be considered necessary to keep disclosure information for longer than six months. We will consult the DBS before we do this and give full consideration to the Data Protection and Human Rights of the individual before doing so. Throughout this time the usual conditions regarding safe storage and strictly controlled access will apply. Exceptions allowed by the DBS are as follows:

- For establishments regulated by the Care Quality Commission/Ofsted Social Care Regulations - disclosure must be destroyed after 12 months.
- For staff employed in residential schools - disclosures must be destroyed after 12 months.
- For disclosure relating to fostering or adoption - disclosures must be destroyed after 36 months.

Once the retention period has elapsed, we will ensure that any disclosure information is immediately destroyed by secure means, i.e. by shredding (at level 6), pulping or burning. Whilst awaiting destruction disclosure information will not be kept in an insecure receptacle (e.g. waste bin or confidential sack). We will not keep any photocopy or other image of the disclosure or any copy or representation of the contents of the disclosure.

If Appendix E: Cause for Concern Risk Assessment is completed this is kept securely for:

- 6 months from the date of the Assessment if not appointed.
- 25 years from the date of the Assessment if appointed.

The form will then be destroyed as above.

Our provider of DBS service will maintain a data base which will keep a record of the name of the subject, the date of the disclosure, the position for which the disclosure was requested, the

unique reference number of the disclosure and the details of any associated recruitment decision taken e.g. employed or not employed.

## **Appendix I: Information on the Single Central Record, volunteers, supply staff, governors and issues that Ofsted Inspector will raise at inspection**

Following the introduction of new regulations in 2006 Principals are responsible for the establishment and maintenance of the Single Central Record. This is a database of all those employed at the Academy and contains information regarding an individual's vetted status, i.e:

- Teachers appointed prior to 1978 were only List 99 checked.
- Teachers appointed prior to March 2002 were List 99 and police checked.
- Teachers appointed after March 2002 were enhanced CRB checked (inclusive of List 99).
- All appointments at a school from May 2006 are required to undertake an Enhanced check for regulated services which includes a check against the Children Barred List, now the DBS enhanced check for regulated activity.
- Those engaged in management roles where they have been Section 128 checked

Principals should not ask existing staff who were not previously eligible for List 99 checks and/or criminal background checks to apply for a retrospective disclosure unless they have grounds for concern about the person's suitability to work with children.

For employees new to the Academy system an Enhanced DBS check is required before they can begin work. If they start work before the DBS check is returned the Principal will undertake a written risk assessment and ensure that they have been pre-checked against the Children Barred List.

In line with 'Safeguarding Children and Safer Recruitment in Education (2006)' every effort must be made to obtain an Enhanced check for Regulated Activity for school based individuals before they commence working with children. An individual can commence work in a school in advance of receiving the DBS disclosure if there is an urgent need for them to do so and the following risk assessments have been undertaken:

### **Risk Assessment**

- The academy has undertaken all of the pre-employment checks
- The academy has submitted a correctly completed DBS disclosure application form which has been sent to the DBS
- The individual has been checked against the DBS Children Barred List
- The academy undertakes a risk assessment to determine what appropriate safeguards must be introduced
- The academy has introduced sufficient safeguards for the individual not to have unsupervised access to children and;
- The Governors and the Principal maintain the 'Single Central Record' which records this and other details.

There is no requirement for an Enhanced DBS check for governors unless they have a role in the Academy that brings them into regulated activity (pre September 2012 definition) or an Enhanced check for Regulated Activity unless they have a role in the Academy that brings them into regulated activity (post September 2012 definition).

## **Volunteers**

Children will see volunteers, in terms of working within their environment, as safe and trustworthy individuals. Volunteers who assist on a “regular” basis are required to undertake a DBS check. Regular contact can be taken to mean, once a week or more often, or on 4 or more days in a thirty-day period, or overnight. Although the disclosure is provided free there is an internal administrative charge. A volunteer is described as a person who performs an activity which involves spending time, unpaid (except for travelling and approved out of pocket expenses) doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives.

Some people can be referred to as volunteers but do not actually meet the DBS’ criteria to get a free check. This may be because they may receive or expect to receive, a benefit such as remuneration or a credit towards a qualification e.g. students on a training placement.

Please note if you are taking on a volunteer, they should be properly described under role of applicant on the disclosure form e.g. “Volunteer classroom helper” – do not just indicate “Volunteer”.

In coming to a decision whether a volunteer requires an Enhanced check for Regulated Services Principals should consider:

- The duration, frequency and nature of contact with children.
- What is known about the volunteer, including formal or informal information offered by staff or other volunteers.
- Whether the volunteer is well known to others in the community who are likely to be aware of behaviour that could give rise to cause for concern.
- Whether the volunteer has other employment, or undertakes voluntary activities where referees would advise on suitability.
- Any other relevant information about the volunteer or the work they are likely to do.

This information will allow Principals to make a risk assessment and use their professional judgment and experience in deciding whether an Enhanced check for Regulated Activity is necessary. Under no circumstances must a volunteer, who has not obtained an Enhanced check for Regulated Activity because one is not required due to infrequent contact, be left unsupervised with children.

## **Supply staff**

Principals should ask supply teachers/staff to produce their copy of the enhanced disclosure certificate and should ask agencies to confirm the validity of the document.

## **Academy Governors**

There is no requirement for routine DBS checks for governors unless they have a role in the Academy that brings them into Regulated Activity e.g. volunteering to work regularly with children in the Academy/classroom. A new, re-appointed or serving governor whose activities or actions give rise to “cause for concern” can be asked to complete an Enhanced check for Regulated Activity. Failure to comply will result in disqualification.

Issues that Ofsted Inspectors will raise at Inspection:

- Is a single central record (SCR) of staff in place?
- Does the SCR record the names, addresses and dates of birth of all members of staff?

- Is there evidence on the single central record that all teachers have been checked against the DBS Children's Barred List?
- If a teacher has an Enhanced check for Regulated Activity in place they have been Children's Barred List checked
- Is there evidence that all staff that have regular contact with children employed since March 2002 been CRB/DBS checked?
- Have all staff appointed since May 2006 whether or not they have regular contact with children been CRB/DBS checked?
- Does the SCR include evidence that supply teachers who work at the Academy have regularly been checked against the Children Barred List or have a recent CRB/DBS check?
- Has the Academy evidence that agency supply teachers have been Children's Barred List and CRB/DBS checked?
- Have volunteers including governors who have regular contact with children been CRB/DBS checked or are they never left in sole charge of children?
- Does the SCR record the date when the CRB/DBS or Children's Barred List check was carried out?
- Does the SCR record all teachers who have qualified teacher status (QTS)?
- Does the SCR record evidence of Right to Work in the UK?
- The Inspector may also ask for details of the date of appointment to be shown on the Single Central Record.

## Appendix J: Ofsted advice Disclosure and Barring Service: repeat check and portability

There are widespread misunderstandings about the portability of enhanced DBS disclosure certificates that have led to schools carrying out unnecessary routine requests for renewed checks. The following sets out the current position in relation to schools and colleges and outlines the differences in social care settings as to when checks need to be in place before an employee can start work.

- DBS checks were strongly recommended for all employees who have regular contact with children if they were employed after March 2002. However, the only requirement for those appointed before this date is that they must have been List 99 checked.
- CRB/DBS checks became mandatory for the entire maintained schools' workforce from 12 May 2006 (September 2003 for independent schools, including academies). Employees who took up post from this date must have an Enhanced DBS check.
- **No further checks are required** for any staff unless the person has a break in service of more than three months. There is no requirement for staff employed before March 2002 to have retrospective DBS checks as long as they have been in continuous service. In this context, continuity means no break of service of longer than three months. However, prior to 2002, there was a requirement for all staff who work with children and young people to have been checked against List 99, and evidence of this should be checked.
- Visiting staff
- Where staff such as educational psychologists, supply teachers, trainee teachers, nurses, sports coaches and inspectors are in regulated activity, their DBS disclosure certificates should be obtained by their "providing" organisation, for example the supply agency, the university, primary care trust, local authority, and so on.
- It is sufficient for schools and colleges to seek written confirmation that appropriate checks, including DBS checks, have been carried out (most commonly on appointment) and by whom (most commonly the relevant human resources department), and to confirm the identity of those visitors. Written confirmation may take the form of a public statement on the providing organisation's website, a practice adopted by Ofsted.
- Part-time staff may use the same DBS check for two or more posts as long as they are at a similar level **and** the school/college have satisfied themselves about their veracity and appropriateness. This level of "portability" is currently available to employers at their own risk.
- Governors
- The Protection of Freedoms Act 2012 has removed the requirements for schools to carry out a DBS check on governors simply because of their office. Governors who volunteer to work with children are also exempt from the requirement to hold an enhanced DBS disclosure certificate as long as they are **appropriately supervised** by a member of staff who has undergone such checks.
- Moving between schools/colleges and local authorities
- Since September 2006 supply agencies have been able to pass checks between other school/college supply agencies and between individual schools and colleges.
- If an employee has been DBS checked, **there is no statutory requirement** that another DBS check is carried out before taking up a job in a different school or even in a different local authority, provided they have continuous service and the check is at the correct level for the new post.

- The same applies to someone who may not have a DBS check due to being in post before 2002, there is no statutory requirement for further checks to be carried out.
- It is up to the receiving organisation to carry out a risk assessment to assess whether the check is at the correct level for the current role, whether it is accurate and whether they trust the previous organisation to have carried out the check efficiently.
- The school or local authority should ask for evidence, from the previous school or local authority, that the check was undertaken. Some schools and local authorities are reluctant to accept transferring staff without requesting a fresh DBS disclosure certificate because they believe that Ofsted would be critical of such arrangements. Inspectors should **avoid** giving any impression that Ofsted considers it good practice to request fresh DBS disclosure certificates routinely whenever a member of staff is recruited directly from another school without a break in service. Schools should be **encouraged** to risk assess each case individually and be prepared to demonstrate the basis for their decisions.
- In all-day educational establishments, new members of staff can take up their posts prior to a full DBS check as long as they work under the close supervision of a colleague who has such clearance.
- The regulations above apply to all schools, including pupil referral units and further education colleges. Social care and residential settings are subject to the national minimum standards which require more stringent requirements in respect of safeguarding checks. In such settings, staff can take up their posts before DBS clearance has been received, but it must have been applied for and the member of staff awaiting clearance must be supervised when in contact with young people.
- In the case of trainees on initial teacher education courses, it is the initial teacher education provider's responsibility, not the school's, to ensure that appropriate recruitment checks are made. In the event of a delay in receiving disclosures from the DBS, the former department for Children, Schools, and Families guidance gave Principals discretion to allow trainees to start working in a school subject to a satisfactory check of Independent Safeguarding Authority Children's List (or List 99) check and completion of other normal recruitment procedures. Training providers should keep Principals fully informed of the progress of applications for disclosures, since schools will want to maintain closer supervision of trainees who have not yet received enhanced clearance. Schools must be satisfied that checks have indeed been done.
- The situation is different for trainees on an employment based teacher training route. They are employed by the school and should therefore be cleared by the school and recorded on the SCR in the same way as other directly employed staff.
- An online registration service facilitates portability of DBS checks for individuals who choose to register. By providing a new employer with an existing disclosure certificate and their online registration number, prospective employees will be able to use the same certificate for any post of a similar nature. The prospective employer will be able to log on to the service and check whether there has been a change since the issue of the printed certificate. If there has been a change, the employer will have to decide whether or not they wish to apply for a new certificate in order to show the updated details.

## Appendix K: Policy on the referral to the Disclosure & Barring Service (DBS)

This policy should be read in conjunction with the Academies' Disciplinary Policy and Procedure.

The DBS was created with the merger of the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA). The ISA was created to prevent unsuitable people from working with children. The ISA had four statutory duties:

- To maintain a list of individuals barred from engaging in regulated activity with children;
- To make well-informed and considered decisions about whether an individual should be included in one or both barred lists; and
- To reach decisions as to whether to remove an individual from a barred list.

The DBS has responsibility for making barring decisions on the Children's list and the Adults list, previously known as:

- The PoCA list under the Protection of Children Act 1999.
- The PoVA list under the Care Standards Act 2000.
- List 99 under the Education Act 2002.

### The legal duty to refer

The Safeguarding Vulnerable Groups Act (2006) sets a legal duty for the employer to refer information to the DBS if they dismiss or remove a member of staff/volunteer from working with children (in what is legally defined as regulated activity) because they meet the referral criteria. The Academy has a duty to refer information to the DBS as a Regulated Activity Provider. Regulated Activity is defined in [Appendix B of the DBS Disclosure and Barred List Policy](#).

### Duty to refer as a Regulated Activity provider

The Academy, as a Regulated Activity Provider, has a duty to refer all allegations of abuse or misconduct towards a child made against a member of staff or a member of staff of a contractor or partner organisation. The terms 'staff' or 'employee' should be read as including unpaid staff (volunteers). The term 'employer' should be read as including any person or organisation responsible for volunteers.

A referral must meet **both** criteria below:

- The Academy withdraws permission for an individual to engage in regulated activity, or would have done so had that individual not resigned, retired, been made redundant or been transferred to a position which is not regulated activity because;
- They think that the individual has:

**EITHER** - engaged in relevant conduct i.e. conduct:

- That endangers a child or is likely to endanger a child;
- If repeated against or in relation to a child, would endanger them or would be likely to endanger them;
- Involving sexual material relating to children (including possession of such material);
- Involving sexually explicit images depicting violence against human beings (including possession of such images), if it appears to DBS that the conduct is inappropriate;
- Conduct of a sexual nature involving a child, if it appears to DBS that the conduct is inappropriate.

**OR** - satisfied the harm test: where the Academy believes that an individual:

- may harm a child,
- may cause a child to be harmed,
- puts a child at risk of harm,
- attempts to harm a child, or
- incites another to harm a child.

**OR** - received a caution or conviction for a relevant offence.

If both conditions have been met the information must be referred to the DBS once the Regulated Activity Provider has gathered sufficient evidence as part of their investigations to support their reasons for withdrawing permission to engage in regulated activity and in following good practice, consulted with their Local Authority Designated Officer (LADO) or Health and Social Care Trust Designated Officer if appropriate. Further guidance can be found in the [DBS Referral Guidance](#).

If following an internal investigation, it is decided that the best course of action is to issue a formal warning and return the employee to a regulated activity with additional training the Academy still have a duty to refer to the DBS. This is because the School has satisfied both conditions by withdrawing the employee from regulated activity and establishing that relevant conduct or the harm test has been satisfied.

### **Duty to refer as an academy**

It is possible that, in the course of a child protection safeguarding investigation, or by other means, a Principal may become aware that a person not employed by the Academy may have satisfied the relevant criteria but that no referral has been made by any other agency. Where possible the employer of the individual concerned should be informed of their legal duty to refer and of the implications for failing to do so. If they still fail to fulfil this duty then a referral should be made by the Local Authority LADO.

Referrals direct to the Teaching Agency or the Health and Care Professions Council will continue in cases of misconduct where there is no vulnerable client protection element.

### **No legal duty to refer**

There are situations in which the Academy may make a referral but there is no legal duty to refer for example following an internal investigation there is insufficient evidence to show relevant conduct occurred but there are serious concerns about that individual. Even though the circumstances do not meet legal requirements, the individual may have left the Academies employment and the Academy knows or believes they work in regulated activity in another setting. This may be reported as “patterns of behaviour” form evidence on which the DBS might make a future decision to bar.

Although there is a legal duty to refer in certain circumstances there is now the power (but not a mandatory duty) for the Academy to make a retrospective referral to the DBS. This is when there is evidence that an individual has engaged in relevant conduct prior to 12 October 2009 and that the person is engaged or may engage in regulated activity.

### **Requirement to submit information where the employee is a “registered professional”**

There may be circumstances in which an employee is registered with the Teaching Agency or the Health and Care Professions Council. It is appropriate to refer circumstances (relating to misconduct where there has been a vulnerable client protection element) to both the DBS and the registering organisation in terms of their respective decision making processes. It could

occur that the DBS decide, on the balance of evidence, that it is minded not to bar an individual, and in that circumstance the DBS may contact the Teaching Agency or the Health and Care Professions Council to ascertain their comment.

### **Duty to provide information to the DBS if requested**

The DBS has the legal right to receive information where it asks for it from Regulated Activity Providers and personnel suppliers. There may be occasions during an investigation when the DBS will ask for additional information to assist it with its decision making. However, this legal right only extends to existing information that might be held. Academies are not required to undertake any additional investigations or enquiries.

### **Who should make a referral to the DBS?**

Responsibility for initiating a referral will lie with the Principal who has raised the initial concern. Support can be obtained from the Trust's HR Provider.

### **How to make a referral to the DBS**

The DBS have a referral form process for use in relation to both children. DBS requires the referral form and all associated papers to be presented in hard copy and this must be done through a secure delivery process.

Where the Academy purchase the service, HR will securely retain a copy of the referral form and all associated papers for future reference, as the DBS may need to refer to any specific case on a subsequent occasion.

## **Appendix L: Introduction to the Rehabilitation of Offenders Act 1974**

The Rehabilitation of Offenders Act (ROA) 1974 ensures those people who have been convicted of a criminal offence in the past are not discriminated against when seeking appropriate employment. A person convicted of a criminal offence and who receives a sentence of no more than 2.5 years in prison, whether suspended or not, is protected by the Act if they are not convicted again during a specified period referred to as the 'Rehabilitation Period'. Generally the more severe the penalty the longer the rehabilitation period.

Once a rehabilitation period has expired and no further offending has taken place, a conviction is considered to be "spent". Once a conviction has been spent, the convicted person does not have to reveal it or admit its existence. However there are exceptions.

### **Exceptions to the Act**

The Academy has a duty of care to protect the well-being of the public and service users and in particular children in its care who are considered to be especially vulnerable or at risk. The Exceptions Order (1975) overrules the employment rights an ex-offender would otherwise have in respect of spent convictions. Ex-offenders have to disclose information about spent, as well as unspent convictions, provided the employer states clearly on the application form or at the interview that the job applied for is exempted.

Exempted occupations fall into the following categories:

- Work that brings the person into contact with groups such as the infirm, elderly, mentally ill and young people under the age of 18.
- Professionals that have legal protection, for example, nurses, doctors, dentists, chemists, accountants.
- Posts concerned with the administration of justice, for example, police officers, lawyers, probation officers, and traffic wardens.
- Health service appointments.

Pre-employment checks and other safe recruitment practices are a requirement to ensure that people who may pose a threat to children and adults are not given positions of trust where they could exploit those entrusted to their care in most circumstances, including when applying for a job. In most circumstances, an employer cannot refuse to employ someone, or dismiss them, on the basis of a spent conviction.

### **Modifications to the Act**

The Modification Order (2013) introduces provisions into the Exceptions Order so that some spent convictions and cautions, which would otherwise be covered by the Exceptions Order, do not have to be disclosed and cannot be taken into account in employment decisions. The Exceptions Order currently provides for full disclosure of a person's criminal history, regardless of how old or minor the disposal. The Court of Appeal has found that this blanket disclosure of all cautions and convictions is incompatible with Article 8 of the European Convention on Human Rights. The purpose of this amendment is, therefore, to remedy this incompatibility by 'filtering' certain cautions and convictions, which are sufficiently old and minor to have no bearing on an employment decision. This means that the individual will no longer have to reveal these cautions and convictions nor will they appear on standard and enhanced disclosure certificates.

In order to maintain public protection, the amendment lists offences which must always be disclosed. These offences are serious violent and sexual offences and other offences of specific relevance for posts concerned with safeguarding children.

The list includes a range of offences which are serious and which relate to sexual offending, violent offending and/or safeguarding. It would never be appropriate to filter offences on this list. A list of offences which will never be filtered has been derived from the legislation and is available here <https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check>

The filtering rules will apply in the following circumstances:

- Cautions, and equivalents, administered to a young offender will not be subject to disclosure after a period of two years.
- Adult cautions will not be subject to disclosure after a period of six years
- A conviction received as a young offender resulting in a non-custodial sentence will not be subject to disclosure after a period of five and a half years.
- An adult conviction resulting in a non-custodial sentence will not be subject to disclosure after a period of 11 years.

A conviction will not be subject to disclosure only if there is no other conviction on the individual's record, whether a young offender or an adult. In addition, no conviction resulting in a custodial sentence will be filtered.

## **Policy**

This Policy applies to job applicants and Academy employees.

### **Job applicants**

The Academy is committed to the fair treatment of its staff, potential staff and users of its services regardless of race, gender, religion, sexual orientation, responsibilities for dependents, age, physical/mental disability or offending background. The Academy actively promotes equality of opportunity for all with the right mix of talent, skills and potential and welcome applications from a wide range of candidates, including those with criminal records. The Academy will select all candidates for interview based on their skills, qualifications and experience.

As an organisation using the DBS disclosures to assess applicants' suitability for positions of trust, the Academy comply fully with the DBS Code of Practice and undertakes to treat all applicants for positions fairly.

A disclosure is only requested when it is legal to do so. The parameters are set out in the main part of the DBS Policy. For those positions where a disclosure is required all job adverts, application forms, and recruitment material will contain a statement that a disclosure will be requested before an appointment is made.

Unless the nature of the position allows the Academy to ask questions about a person's entire criminal record the Academy will only ask about 'unspent' convictions as defined in the Rehabilitation of Offenders Act (1974).

The Academy will ensure that all those in the Academy who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. The Academy will also ensure that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act (1974).

Having a criminal record will not bar someone from working at the Academy. This will depend on the nature of the position and the circumstances and background of the offences. The Academy does not discriminate unfairly against any subject of a disclosure on the basis of

convictions or other information revealed. At interview, or in a separate discussion, the Academy will ensure that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position before any offer of employment is considered.

### Protection of a Rehabilitated Person

The unauthorised disclosure of information about a spent conviction is illegal. Unauthorised disclosure is where an official with access to information about the person's criminal record discloses this information other than in the course of official duties. Serious misuse of a person's criminal record could result in a prison sentence of up to six months or a fine of up to £1,000, or both.

### Self-Disclosure

Where a disclosure is to form part of the recruitment process, the Academy will ask all applicants to voluntarily provide details of their criminal record at an early stage in the application process. The Academy will guarantee that this information will only be seen by those who need to see it as part of the recruitment process. This information will be treated in strict confidence, will be securely stored and kept for only as long as is necessary. Failure to disclose convictions on an application form that is directly relevant to the position sought could lead to withdrawal of an offer of employment.

### Academy employees

Following appointment, employees have a responsibility to report any relevant changes of circumstance to their employer. This is contained within the Academies Code of Conduct. These include any criminal investigations, convictions or warnings they may become the subject of, or any other relevant information which a reasonable employer might consider to impact on the employment of that individual. Employees should always discuss with the Principal any difficulties or problems that may impact on their suitability to work with children so that appropriate support can be provided or action taken. Failure to disclose convictions with the Principal may result in disciplinary action.

Any existing employee may be asked to undertake a DBS re-check in line with Academy policy. Refusing to comply with such a request may result in the employee being subject to formal disciplinary action for deliberate and/or unreasonable refusal to carry out lawful and safe instructions issued by the Principal, and/or to comply with a contractual agreement.

Confidentiality cannot be guaranteed where concerns arise about the welfare or safety of children or adults but any information sharing will be in accordance with relevant legislation and policy and only as is necessary in the circumstances.

### Rehabilitation periods

| Sentence                                                                                                    | Rehabilitation Periods           |                                  |
|-------------------------------------------------------------------------------------------------------------|----------------------------------|----------------------------------|
|                                                                                                             | AGE 18 OR OVER<br>WHEN CONVICTED | UNDER 18 WHEN<br>CONVICTED       |
| Convictions resulting in terms in imprisonment in excess of 2.5 years are never spent.                      |                                  |                                  |
| Prison and Young Offender Institution – sentence of more than 6 months – 2 ½ years                          | 4 years                          | 2 years                          |
| Prison and Young Offender Institution – sentence 6 months or less                                           | 2 years                          | 18 months                        |
| Fines, compensation order, probation (for people convicted on or after 3 February 1995), community service, | 1 year from date of conviction   | 6 months from date of conviction |

|                                                                                 |          |          |
|---------------------------------------------------------------------------------|----------|----------|
| combination order, action plan, curfew order, drug treatment, reparation order. |          |          |
| 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**

|                                                                                                                                  |                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| Probation order (for people convicted prior to 3 February 1995), conditional discharge, bind over, supervision order, care order | Until the order expires (minimum period of 1 year)                                      |
| Attendance Centre Orders                                                                                                         | Length of the order plus 1 year                                                         |
| Hospital Order                                                                                                                   | 2 years after the order expires (with a minimum of 5 years from the date of conviction) |

### **Suspended sentences**

A suspended prison sentence is treated as one that has taken effect and the rehabilitation period is the same as for the full sentence.

### **Consecutive and concurrent sentences**

An offender may be sentenced at one time for several offences. If the court decides that imprisonment is the right penalty for more than one offence, it can order that these run concurrently or consecutively. If a person is sentenced to two terms of imprisonment of six months each, to run concurrently, the person will be subject to a rehabilitation period of seven years. If they were ordered to run consecutively, they would be subject to a rehabilitation period of ten years.

### **Extension of rehabilitation periods**

Rehabilitation periods may be extended if a person receives further convictions while an original rehabilitation period is still running. If the second conviction is for a summary offence, i.e. an offence that can be tried only in a Magistrates' Court, then the first rehabilitation period is not affected and both rehabilitation periods will run their separate course. If, however, the second conviction is more serious and could be tried in a Crown Court, then neither conviction will become spent until the longer rehabilitation period has expired.

Where the original sentence resulted in a disqualification, probation or other penalty, the rehabilitation period will not be affected if the person is convicted of a further offence.