

Protection of Freedoms Act 2012 – Changes to CRB checks and the vetting and barring scheme

CRB to DBS Checks

Under the provisions of the Protection of Freedoms Act 2012 (“the Act”), the Criminal Records Bureau (CRB) and Independent Safeguarding Authority has merged to form the new Disclosure and Barring Service (DBS). The DBS will now carry out the functions of the CRB. These changes will alter the way in which organisations vet their employees and trustees. The main aim of creating a new joined up service is to make it easier for organisations to make the relevant checks on, (in the case of charities), trustees and volunteers, and to prevent unsuitable people from working with vulnerable adults and children.

There are three types of DBS checks available:

- **Standard-** A standard check will check for spent and unspent convictions, cautions, reprimands and final warnings.
- **Enhanced-** An enhanced check will reveal the same information as the standard check, plus any information held locally by police forces. Previously, the police provided information when they considered it to be relevant to the purpose for which the certificate is requested. However, the police will now provide information that “might be relevant”.
- **Enhanced with list checks-** This will reveal the same information as above, as well as if the individual is on a “barred list” of individuals that are unsuitable for working with children or vulnerable adults.

DBS certificates are now issued for all completed checks, although existing CRB certificates will remain valid. Current CRB application forms were accepted up until 28 February 2013, but now only DBS application forms will be processed by the Disclosure and Barring Service.

A key advantage of the new scheme is that a criminal record update service will be available, which will allow for the DBS certificate to be regularly reviewed. Previously, CRB certificates only showed information that was valid at the time the certificate was issued. For a small fee, organisations will now be able to subscribe to an updating service when they apply for a criminal record check, through which the DBS will indicate whether there is any new information available and if a new certificate needs to be applied for. The aim is to avoid repeat applications and to allow for greater flexibility between different roles.

The new scheme also introduces the ability for people other than the applicant to apply to the DBS if they believe that information on the certificate is inaccurate. An applicant will be able to apply to an Independent Monitor to review an enhanced DBS certificate if information

is included that he/she does not believe should be, and the Monitor can ask the DBS to issue a new certificate.

Who can obtain checks?

Organisations will only be able to apply for DBS checks if they are eligible to do so. The type of DBS check that needs to be applied for will depend on the role of the particular employee/trustee. It is only positions of employment that are excepted or exempt under the Rehabilitation of Offenders (Exceptions) Order 1975, which are eligible for DBS checks i.e. positions that involve working with children or vulnerable adults. To be eligible for an enhanced DBS check, the post must also be included in the Police Act 1997 (Criminal Records) Regulations 2002. In addition, to be eligible to request a check of the barred lists, the position must meet the new definition of a regulated activity (discussed further below).

Applying for a DBS check for posts and roles that are not eligible could constitute a breach of employment law. Further guidance on eligibility can be found on the Home Office website. This is a complex area of law and we advise that organisations seek further advice where necessary.

DBS checks are only available for those who are over 16.

Changes to “Regulated Activities”

The Act introduces a new definition of a “regulated activity”. The definition has been amended to focus on work that involves close and unsupervised contact with vulnerable adults and children. Therefore, supervised adults will no longer fall within the definition, thereby reducing the number of people working within a regulated activity. However, organisations will still be required to notify the DBS if a person is dismissed from a regulated activity.

Being a trustee of a charity working with children or vulnerable adults is in itself no longer considered as a regulated activity. It is only if the trustee has close, unsupervised contact with vulnerable groups that the role will be considered as a regulated activity under the Act and be eligible to obtain an enhanced DBS check and barred list check. Trustees falling under the pre-September regime who no longer fall within the definition of a regulated activity will still be eligible to obtain an enhanced DBS check but not a barred list check.

However, the Charity Commission still recommends that charities always obtain DBS checks for trustees and staff when they are able. It is essential that charities have robust vetting and safeguarding policies in place for the recruitment of trustees and employees, which are regularly updated and reviewed.

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