

# Annexes

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# Annex 1: Disclosure and Barring Service (DBS) checks, repeat checks and portability

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The Protection of Freedoms Act 2012 came into effect on 10 September 2012 with further changes coming into force on a staged basis over the next few years.

The following changes were put in place in September 2012:

- a new definition of “regulated activity” to focus on work which involves close and unsupervised contact with vulnerable groups
- activities and work that have been taken out of the definition of “regulated activity” will still be eligible for Enhanced DBS checks
- the repeal of “controlled activity”
- the repeal of registration and continuous monitoring
- the repeal of the provision of additional information
- the implementation of a minimum age (16) at which someone can apply for a DBS check
- a more rigorous ‘relevancy’ test for when the police release information held locally on an enhanced DBS check

On 1 December 2012, the CRB and ISA merged to form the Disclosure and Barring Service.

The DBS is responsible for administering three types of checks;

- **Standard** - a check on the Police National Computer (NPC) records of convictions, cautions, reprimands, and warnings
- **Enhanced** - a check on the PNC as above plus also other information held by the police that is considered relevant by the police

- **Enhanced with barred list information** – for people working in regulated activity with children. This adds checks of the DBS children’s barred list to the enhanced check.

During 2013, the DBS launched its Update Service. Employees are now able to register once for a DBS check, which is then automatically updated and available for organisations to check.

However, there are aspects of the old system which are not changing, these are:

- employers must make appropriate referrals to the DBS
- employers must not allow someone whom they know has been barred by the DBS to undertake regulated activity
- employers may undertake checks for anyone employed in activities which fall within the pre-September definition of regulated activity, as they remain eligible for enhanced DBS checks, whether or not they fall within the post-September definition of regulated activity (but they will no longer be eligible for barred list checks if they do not fall within the new definition of regulated activity)

Previously there has been widespread misunderstanding about when and how frequently to undertake checks. The following sets out the current position in relation to schools as to when checks need to be in place before an employee can start work.

- CRB 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 was that they must have been List 99 checked.
- CRB checks became mandatory for the entire maintained schools’ workforce from 12 May 2006 (September 2003 for independent schools). Employees who took up post from this date must have an enhanced CRB 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 statutory requirement for staff to have routinely updated checks, although some employers may require this as policy. There is also no statutory requirement for staff employed before March 2002 to have retrospective CRB or 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 to been checked against List 99, and evidence of this should be checked.

An employer can only ask for a barred list check for those staff undertaking regulated activity. It’s a criminal offence to ask for a barred list check for any other role.

Under the Education Workforce Council (Main Functions) (Wales) Regulations 2015,

registration with the Education Workforce Council is a statutory requirement for every teacher who works in a maintained school or PRU in Wales. The DBS provides EWC with regular updates on barred individuals. Note that some criminal offences do not debar a person registering as a teacher.

## **Supply staff and visitors employed by an agency**

Staff such as educational psychologists, supply teachers, trainee teachers, nurses, sports who are employed by an agency should be CRB or DBS checked by their employer, for example the supply agency, the university, or local authority.

It is sufficient for schools to seek written confirmation that all appropriate checks, have been carried out for these people (most commonly on appointment) and by whom (most commonly the relevant human resources department). Schools should then confirm the identity of these visitors.

## **Supply staff who are not employees of an agency**

Many of these staff are not employees of a supply agency, therefore, schools cannot assume that supply staff matched with them in this way have been through the necessary vetting procedures. Schools should confirm directly with the individual supply, that the necessary recruitment checks have taken place before staff start work with them.

## **Part-time staff**

Part-time staff may use the same CRB or DBS check for two or more posts as long as they are at a similar level **and** the school has satisfied themselves about their veracity and appropriateness.

## **Governors/members of PRU management committee**

The position relating to governors has changed under the **Protection of Freedoms Act 2012**. As school Governors are no longer undertaking regulated activity, there is no requirement for them to be subject to vetting and barring checks. However, where

governors are undertaking some form of regular contact (as defined by the Act); with pupils, they are subject to risk assessment and possible vetting and barring unless adequately supervised.

## Moving between schools and local authorities

Since September 2006 supply agencies have been able to pass CRB or DBS checks between other school supply agencies and between individual schools.

- If an employee has been CRB or DBS checked, **there is no statutory requirement** that another CRB or 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 CRB or DBS check due to being in post before 2002, that is, there is no statutory requirement for further checks to be carried out.
- It is up to the receiving organisation to decide for itself if it wishes to undertake a new check or not. If it decides not, then it should 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 CRB or DBS disclosure certificate because they believe that we would be critical of such arrangements. Inspectors should avoid giving any impression that we consider good practice to request repeat CRB or 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.
- Schools / local authorities which fail to secure evidence that paid staff and unsupervised volunteers have undergone the appropriate DBS checks before the staff member begins face to face teaching, should receive a judgment of unsatisfactory. However, a school or local authority has only initiated the checking process but has not received confirmation of suitability they must have carried out a suitable risk assessment and put in place appropriate supervision for the member of staff. This will be reflected in the inspection report.
- It is only volunteers who are supervised who do not need DBS with barred list checks

The regulations above apply to all schools, including pupil referral units. 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 children and young people.

## **Initial teacher training**

In the case of student teachers on initial teacher education courses, it is the initial teacher education partnership's responsibility, not the receiving schools, to ensure that appropriate recruitment checks are made. In the event of a delay in receiving disclosures from the DBS, the Welsh Government's guidance gives discretion to allow students to start working in a school subject to a satisfactory check of the DBS' children's' barred list and completion of other normal recruitment procedures.

The partnership should keep its school leaders fully informed of the progress of applications for disclosures, since these leaders will need to maintain closer supervision of students who have not yet received enhanced clearance. Leaders must be satisfied that checks have indeed been done.

The situation is different for student teachers on an employment-based teacher training route. They are employed by the school and should therefore be cleared by the school and in the same way as other directly employed staff.

# Annex 2: Regulated activity as defined by the Protection of Freedoms Act 2012

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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.

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

(i) **Unsupervised activities:** teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children;

(ii) **Work for a limited range of establishments** ('specified places'), with opportunity for contact: for example, schools, children's homes, childcare premises. **Not work** by supervised volunteers;

Work under (i) or (ii) is regulated activity only if done regularly. Regular means carried out by the same person frequently (once a week or more often), or on 3 or more days in a 30-day period (or in some cases, overnight).

The government has provided statutory guidance about supervision of activity, which would be regulated activity if it were unsupervised.

(iii) **Relevant personal care**, for example washing or dressing; or health care by or

supervised by a professional;

(iv) **Registered child-minding**; and foster-carers.

### **What is no longer a regulated activity when working with children?**

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



# Annex 3: Handling allegations of abuse against teachers and other staff Welsh Government Circular 009/2014

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[This is statutory guidance](#) for maintained schools and FEIs and non-statutory guidance for independent schools.

Schools and further education colleges should have procedures for dealing with allegations and all staff and volunteers should understand what to do if they receive an allegation or have concerns about another member of staff.

The procedures should make it clear that **all allegations should be reported immediately**, normally to the head teacher, principal or proprietor if it is an independent school.

The procedures should also identify the person, usually the chair of governors, to whom referrals should be made in their absence; or in cases where the head teacher or principal themselves is the subject of the allegation or concern. For PRUs this person might be a local authority officer rather than the chair of the management committee.

Procedures should also include contact details for the local authority officer with responsibility for providing advice and monitoring professional abuse cases. The Local Authority Officer should be informed of all allegations that come to a school's attention and appear to meet the criteria set out below.

A member of staff is alleged to have:

- behaved in a way that has harmed a child, or may have harmed a child;
- possibly committed a criminal offence against or related to a child; or
- behaved towards a child or children in a way that indicates he or she would pose a risk of harm if they work regularly or closely with children.

The above procedures relate to members of staff who are currently working in any school, regardless of whether the school is where the alleged abuse took place.

Allegations against a teacher who is no longer teaching should be referred to the police.

# Annex 4: Procedures for reporting misconduct and incompetence in the education workforce in Wales. Welsh Government circular 168/2015

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[This guidance](#) sets out the reporting arrangements for cases of professional misconduct and professional incompetence in the education service. It applies to education providers in both the maintained and independent sectors.

In summary:

- If a member of staff or volunteer is dismissed or resigns before being dismissed for misconduct that relates to the harm, or risk of harm, to a child or vulnerable adult the employer must refer the matter to the DBS. If the member of staff is registered with the Education Workforce Council (EWC), the employer must also make a referral to the EWC.
- If a member of staff or volunteer who is registered with the EWC is dismissed or resigns before being dismissed for misconduct that does not relate to the harm, or risk of harm, to a child or vulnerable adult the employer must refer the case to the EWC.
- If a member of staff or volunteer who is not registered with the EWC (eg caretaker) is dismissed for misconduct that does not relate to the harm of a child or vulnerable adult, the employer should deal with the case under their own disciplinary procedures.

# Annex 5: Preventing radicalisation and extremism

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From 1 July 2015, schools, PRUs and FEIs must have 'due regard to the need to prevent people from being drawn into terrorism'. This is set out in Section 26 of the [Counter-Terrorism and Security Act 2015](#) and the accompanying [Prevent duty guidance](#) under section 29 of the Act.

The context of the school will affect the extent to which inspectors will need to consider the school's work in this area. However, every school and PRU must comply with the duty and inspectors should satisfy themselves that the provider is aware of the duty and acting appropriately.

# Annex 6: Security

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## Site security and site safety

It is the responsibility of the headteacher and governing body to ensure that the school site and its building are safe. These arrangements will vary from school to school depending on the nature of the site and the age of the pupils on roll. Arrangements in primary schools may be different to those in secondary schools. In the case of a PRU, it is the local authority and not the teacher in charge / management committee that has ultimate responsibility.

We expect the school to:

- carry out a thorough risk assessment of the school site, for example taking account of site security, public rights of way, traffic management arrangements and the condition of all buildings
- make appropriate arrangements to manage those risks appropriately
- tell their employees about the risks and measures to be taken to manage the risks
- ensure that adequate training is given to employees on health and safety matters

## The use of leisure centre facilities

It is the school's responsibility to ensure that learners are safe when using leisure centre facilities. This should include not only pupil use of the facilities but also travel arrangements for getting to these when not on a shared site. Learners should have designated changing facilities that cannot be accessed by members of the public when in use by them. We expect the school to carry out a thorough risk assessment of the school's use of such facilities and make appropriate arrangements to manage those risks appropriately.

# Annex 7: Safeguarding Intelligence and inspections

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## **Advice to RIs and team inspectors on the importance of taking account of any intelligence held by us regarding parental complaints against a provider, and any safeguarding matters in the management of an inspection.**

When preparing for inspection, the IC will inform the Reporting Inspector (RI) if there is any relevant safeguarding intelligence, or complaints about the provider held by Estyn. This is so that the RI may use this information to inform lines of inquiry. This information is helpful and may alert the RI that parental concerns may be raised during the parents' evening, or even after the inspection. Where the IC has indicated that there is safeguarding intelligence the RI must contact a member of our Safeguarding Lead Officer Team for a briefing, who will suggest a suitable line of inquiry.

The RI is also able to use the provider's safeguarding self-evaluation form and the parent and learner questionnaires to inform their lines of inquiry for wellbeing and safeguarding. Where pre-inspection evidence in any sector identifies possible safeguarding issues or poor management by the provider, seek guidance from your sector's Assistant Director and the Safeguarding Team. Where any new issue is potentially referable, our safeguarding policy must be applied.

During the inspection, if we receive any relevant information about a safeguarding matter, a member of our safeguarding team will inform the RI and agree how to deal with the matter. The RI must ensure they record any evidence relating to any safeguarding lines of inquiry from interviews, observations or file reading in their JF, as this may be needed for any subsequent correspondence arising after the inspection. If the RI or another team member records any confidential information this should be passed to a member of our Safeguarding Team for secure filing. The detail of this confidential information should not be recorded in the JF but a note that the material has been passed to a member of our Safeguarding Team along with the relevant case number

should be noted.

An incident may come to light after an inspection, and we may be asked to account for what the inspection team knew at the time and the actions the team either took or did not take. In the case of serious injury or death, this accountability could be through a Serious Case Review. It is vital to record any information in your JF, and any confidential information shared from our safeguarding files.

# Annex 8: Supporting learners with healthcare needs

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[Supporting learners with healthcare needs | GOV.WALES](#)

This document is designed to assist local authorities, governing bodies, education settings, education and health professionals and other organisations to support learners with healthcare needs and ensure minimal disruption to their education. It contains both statutory guidance and non-statutory advice.

In summary:

- Local authorities and governing bodies must have regard to this statutory guidance when carrying out their duties in promoting the welfare of children who are learners at the education setting, including meeting their healthcare needs. The guidance also applies to activities taking place off-site as part of normal educational activities.
- Learners with healthcare needs should be properly supported so that they have full access to education, including trips and physical education.
- Governing bodies must ensure that arrangements are in place to support learners with healthcare needs.
- Governing bodies should ensure that education setting staff consult the relevant professionals, learners and parents to ensure the needs of the learner with healthcare needs are properly understood and effectively supported.

The guidance provides information on

- The procedures for record keeping and management of learners' healthcare needs
- Creating an accessible learning environment
- The storage, access and the administration of medication and devices



- Staff training
- Emergency procedures
- Individual Healthcare Plans
- Unacceptable practice