



WARWICK

Guidance Notes on the processing of Disclosure and Barring Service (DBS) checks



WARWICK

Summary

This guidance explains the rules relating to Disclosure and Barring Service (DBS) checks, including:

- When it is necessary and appropriate to carry out DBS checks on prospective and existing University employees, workers and visiting/honorary associates.
- Who to contact if a check is required and the process involved.
- What happens if an individual or a DBS check discloses a criminal conviction.

The guidance should be read in conjunction with the University [Safeguarding Policy](#).

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1. Purpose

- 1.1 The Disclosure and Barring Service (DBS) was established to help employers make safer recruitment decisions by identifying individuals who may be unsuitable to undertake certain work. On request from an organisation who is registered with the DBS ('registered bodies'), the DBS service can undertake criminal record checks at the appropriate level for specific positions, professions, employment, offices, works and licences included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and those prescribed in the Police Act 1997 (Criminal Records) regulations.
- 1.2 The University has a duty to ensure that anyone recruited to or engaged in certain roles and activities are checked at the appropriate level before they undertake these duties. The purpose of this document is to support recruiters/managers in understanding the legal eligibility requirements for distinct types of checks (see [Section 3](#)) and in ensuring that job applicants understand the type of check required and the information they need to disclose.

DBS checks help manage the risk of employing someone unsuitable for an activity or role, along with other aspects of recruitment that combine to create a safer process. For example, checking for gaps in employment history and exploring these with the candidate, asking relevant interview questions around attitudes and behaviour as detailed in the person specification and seeking references as part of the screening process. Further information on the recruitment and screening process can be found in the University's Recruitment Policy and the HR webpages. See link [here](#).

- 1.3 This document should be read in conjunction with the [University Policy on Safeguarding](#), the [University policy on the Recruitment and Employment of ex-Offenders](#) and the [University Policy on Data Protection](#).

2. Scope

- 2.1. This guidance applies to both prospective and existing employees and temporary workers requiring a DBS check. The department engaging the employee or worker initiates the request for a DBS check to be undertaken and the HR Administration Team Leader or the WMS HR Officer verifies whether the request is legally valid and administers the DBS process where it is appropriate to do so.
- 2.2. DBS checks for agency workers are out of scope of this guidance. Departments should contact the agency directly (e.g., Unitemps) for any agency workers who may require a DBS check.
- 2.3. DBS checks for students and those who undertake non-paid voluntary activity are managed by the Student Recruitment Outreach and Admissions Service (SROAS) and are out of scope of this guidance. Guidance is available from the Deputy Admissions Officer who administers the process for students.
- 2.4. DBS checks for projects run by Warwick Volunteers and are out of scope of this guidance. Guidance is available from the Project Manager for Warwick Volunteers who administers the process.

3. What is a DBS check?

- 3.1. A DBS check is a check of criminal records held in the UK and provides details of an individual's unspent and, for certain types of check, also spent criminal convictions in the UK. For certain roles, there is also a check of the child and/or adults barred lists. There are strict conditions when a DBS check can be undertaken as the law restricts an organisation's ability to enquire into individuals' criminal history. Only persons over the age of 16 years old can be asked to undertake a DBS check.
- 3.2. Generally, asking questions about spent convictions or conducting DBS checks is prohibited as outlined in the Rehabilitation of Offenders Act 1974 (ROA) as a person whose conviction is spent is treated as if he/she had not committed the offence in question. Individuals have no legal obligation to reveal spent convictions. It is therefore a criminal offence to request a check if the University is not legally entitled to do so. It is also unlawful to refuse to employ a rehabilitated person on the grounds of a spent conviction under the Act.
- 3.3. There are, however, specific exceptions to this general principle which are set out in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and the Police Act 1997 (Criminal Records) Regulations. The regulations list the positions, professions, offices, etc. which are exempt from the prohibition on disclosing spent convictions. Where a role or activity is eligible for a DBS check under the legislation, the level of check carried out must be appropriate to the activity. In these situations, employers may ask an 'exempted question' about spent convictions and the person has a legal obligation to reveal any spent convictions. Further information on the rehabilitation of offenders and time periods after which an offence may be "spent" can be found at the following link: <https://www.gov.uk/guidance/rehabilitation-periods>.
- 3.4. A standard, enhanced or enhanced plus barred list check may only be requested by an organisation that is registered with the Disclosure and Barring Service or that uses an umbrella body to conduct checks on their behalf. The University has engaged a registered umbrella body called First Advantage who currently conduct checks on our behalf. The registered body has a countersigning officer who must be satisfied that

the position is eligible under the current legal provisions before countersigning each DBS application form. First Advantage as the registered body with DBS has counter-signatory responsibility for the University's DBS applications.

- 3.5 The Disclosure and Barring Service is responsible for processing requests for DBS checks and also decides whether it is appropriate for a person to be placed on or removed from a Children's or Adults' Barred List in England, Wales and Northern Ireland. Additional information about the DBS is available on [their web pages](#).
- 3.6 The University is required by law to request checks where activities are being carried out by individuals that meet the definition of a Regulated Activity. Someone who is barred from working with children and/or adults at risk must not be employed to undertake a Regulated Activity and a check against the lists of those barred must be made by the University. How to identify if an activity falls under the definition of a Regulated Activity is covered in [Appendix 1](#) and how to request a DBS check plus a check of the appropriate barred list is covered in [Section 6](#) of this guide.
- 3.7 A DBS check has no legally defined expiry date and any information included will only be accurate at the time the check was carried out. The University Policy is to carry out repeat checks, where the activity concerned remains eligible for a check, at three yearly intervals. Please see [Section 10](#) for information about repeat DBS checks.
- 3.8 There are different types of DBS check, as set out below. Eligibility for the different types of check is explained in Section 4.
- 3.8.1 **Basic Checks**
Basic checks are a type of criminal record check that show any '[unspent](#)' criminal records as defined by the Rehabilitation of Offenders Act 1974. Once a conviction or caution is '[spent](#)', it no longer shows on a basic check. An employer may ask an applicant to consent to obtain a basic check as part of the recruitment process and the check itself can either be requested by an individual directly to DBS using an online self-service process or apply via their employer or other registered organisation. No professions specifically insist on a basic disclosure check. **The University does not normally carry out basic checks.**
- 3.8.2 **Standard checks** – A standard check contains details of unspent convictions but also includes cautions, reprimands and warnings received in England and Wales held on the Police National Computer (PNC) that are not 'protected'. Protected convictions and cautions are normally old and minor; they are filtered by the DBS so they are not disclosed, and they must not be considered by employers. The rules on what convictions can be filtered from the check (but not from police records) are on the [government website](#). There is also a page which details the [list of offences that will never be filtered](#).
- 3.8.3 **Enhanced checks** – The Enhanced check contains the same information as the standard check but also any relevant and proportionate information held by the local police forces.
- 3.8.4 **Enhanced checks with children's and/or adults' barred list check(s)** – Registered bodies can request a check on whether a person is barred from working with children or adults in Regulated Activity. Regulated Activity is defined as types of regular unsupervised work with children and

adults and further information about the criteria for determining Regulated Activity and the types of roles that undertake Regulated Activity can be found in [Appendix 1](#).

4. Roles eligible for a DBS check

- 4.1. There will be roles or activities undertaken at the University that will require a DBS check at the appropriate level. The majority of these will be roles or activity that is classed as 'regulated activity'. A limited number of other roles may be eligible for a DBS check that do not undertake regulated activity but are listed in the ROA Exceptions Order or in the ROA Exceptions Order **and** in the Police Act 1997 Regulations. Eligibility guidance for DBS checks is found on the GOV.UK webpages at: <https://www.gov.uk/government/collections/dbs-eligibility-guidance>. However, eligibility criteria for DBS checks can be complex; this document sets out how it applies in the University.
- 4.2 **Roles that are eligible for a Standard Check.** To be eligible to request a standard level DBS check, the position must be included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975. There are a limited number of these roles identified at the University which may require a Standard Check. For example, those roles related to health services and where there is contact with patients but where the activity is not eligible for an enhanced check.

For some University roles, the requirement for a DBS check is listed as required on entry into the relevant profession only, such as solicitors and chartered accountants. This is because these roles are positions of high responsibility, and a standard disclosure is required to prove that an individual has no prior offences for industry-sensitive matters such as financial misconduct or fraud. If this applies, it may be that the relevant professional body would undertake this DBS check prior to conferring chartered status so the University would be obliged to investigate this on a case-by-case basis.

- 4.3 **Roles that are eligible for an Enhanced Check.** To be eligible to request an enhanced level DBS check, the position must be included in both the ROA Exceptions Order **and** in the Police Act 1997 (Criminal Records) regulations. There are also some activities that are no longer classed as regulated activity, but which were formerly classed as such before the changes made under the Protection of Freedoms Act 2012. Examples of such activities are someone carrying out research that involves teaching/training/instructing/supervising within schools on a frequent basis whilst supervised and any form of assistance to vulnerable adults on a frequent basis. For these types of activity, it is possible to request that an enhanced check is undertaken for these roles (only enhanced with no barred lists).
- 4.4 **Roles that undertake Regulated Activity that require an Enhanced DBS check with the appropriate barred list check.**
To be eligible to request an enhanced check with one of the children's or adults' barred lists, the position must be eligible for an enhanced level DBS check as above **and** be specifically included in the Police Act 1997 (Criminal Records) regulations to be able to check the appropriate barred list(s). Roles in the University that involve working directly with children and adults are the most frequent examples of roles covered by the category of Regulated Activity. In these situations, the University must conduct an enhanced DBS check with the appropriate barred list check. To be classed as Regulated Activity the role will involve the following:

- Teaching, training, instructing and supervising children whilst unsupervised at least once a week or more or on four days or more in a 30-day period;
 - Health care provided by, or under the direction or supervision of a regulated health care professional. This only needs to be on one occasion to qualify as regulated activity.
- 4.5 To determine whether a role will be eligible to be checked will depend on the specific role or activity, its location and setting, its frequency, duration and degree to which the role is supervised to determine whether the role undertakes or supervises 'Regulated Activity'. It is not simply the case that a job title would determine whether the role is eligible to be checked but instead an assessment of the activity undertaken is required using the qualifying criteria to check if the role is eligible for a DBS check. This is because the specific activity may differ from person to person e.g., a Research Fellow carrying out research in a hospital or school may require a check, but all Research Fellows will not. The full criteria for use when assessing whether the activity is regulated is contained in [Appendix 1](#). A gov.uk webpage is also available to assist with determining whether a check is required: www.gov.uk/find-out-dbs-check
- 4.6 Teaching, training, instructing, caring for or supervising a 16 or 17-year-old's employment or work experience is **not** classed as Regulated Activity and a DBS check may not be requested for this purpose. A DBS check may only be required for work experience students under 16 in the rare event that the same person is teaching, training, instructing, caring for or supervising them whilst unsupervised on a frequent/intensive basis.

5. DBS eligibility assessment process

- 5.1 The department must establish **before** the start of the recruitment process for a new or vacant post, at the point when the job description and activities are being reviewed, whether the post is one which will require a DBS check to be carried out and at which level. It is the responsibility of the recruiting or line manager to complete the online DBS Eligibility Assessment Form for the activity or role to check whether the role is eligible for a DBS check and at what level. Additional information regarding regulated activity is contained at [Appendix 1](#) of this document.
- 5.2 The eligibility assessment must be carried out before the advert for the role is placed, as any requirement for a DBS check and at what level must be clearly stated in the advert. Where relevant, it is important to state that the role involves regulated activity and therefore an enhanced check with a check of the appropriate barred lists is required as it is an offence for a person barred from working in regulated activity with children or adults to apply for such work.
- 5.3 For an existing employee who will be undertaking a new activity, the line manager should identify if any new activities are to be undertaken which may require a DBS check at whatever level. This eligibility assessment will need to be carried out using the online DBS Eligibility Assessment Form. The job description may need to be updated to reflect the change if the new activity is now a requirement of a specific role. Again, it is important to clearly state to the existing employee if the new activity involves regulated activity and therefore an enhanced check with a check of the appropriate barred lists is required. This is because it is an offence for a person barred from working in regulated activity with children or adults to undertake such work.

- 5.4 The form will also ask if other additional checks may be required, e.g., Teacher Prohibition Orders checks. Tick boxes have been provided to indicate this. Further information on other additional checks required for specific situations can be found in [Section 12](#) and in the appendices.
- 5.5 Once submitted, the HR Administration Team Leader, in conjunction with the department, will assess whether the University is legally entitled to request that a DBS check is carried out. The eligibility assessment forms part of the University's legal responsibility to ensure it is entitled to ask the person to reveal their conviction history. As the registered umbrella body who conducts checks on our behalf has counter-signatory responsibility for the University's DBS applications, they must also agree with the assessment of eligibility of new roles.
- 5.6 If the outcome of the assessment is that a DBS check is required, the recruiting manager is responsible for ensuring that the job description is updated if required and ensure that any advert clearly states that a DBS check is required and details the level of check. It is important to state if the role involves regulated activity and therefore an enhanced check with a check of the appropriate barred lists is required as it is an offence for a person barred from working in regulated activity with children or adults to apply for such work. The request to include this wording must be included as part of the [HR – R3 Request to Advertise Form](#).

6. Process for requesting and obtaining a DBS check

- 6.1 Provided the outcome of the eligibility assessment is that a DBS check is authorised to be obtained at the stated level for the activity or the post, a DBS check against an individual can be requested by the recruiting or line manager by completing the DBS Eligibility Assessment Form. **The person should not start in their new role or start to carry out any regulated activity until the check has been undertaken.** In exceptional circumstances, it may be agreed following an assessment of risk, to start the person in the role provided they do not carry out regulated activity or provided they are supervised at all times (see 6.2 below)
- 6.2 If by exception it is agreed that the individual may be able to carry out some activities that are not classed as regulated activity before the DBS check has been satisfactorily completed or where the person will be supervised at all times, these exceptions must be submitted as a request on the form by the manager and must detail the measures that must be adhered to if the individual begins work before the check is completed. The request must be approved by HR before a start date can be confirmed with the person.
- 6.3 A DBS Certificate obtained by an applicant as a result of a check made by another organisation may, in limited circumstances, be accepted for use by the University. The DBS certificate must be identical to the level of check required by the position and the individual must have signed up for the online update service. If either of these conditions is not met, the University will require a new DBS check to be undertaken.
- 6.4 For a new/vacant role being filled as part of a recruitment process, the request for a check of the successful applicant can be submitted once you have made a conditional offer as part of the pre-employment check process using the HR – R5 New Offer Form. Only successful applicants with a job offer can be checked and you will not be able to request a DBS check for all shortlisted applicants. If the results reveal information that would make the applicant unsuitable for the particular role for which they have applied, you will be advised of the relevant course of action by HR.

Please see [Appendix 3](#) which details the process for considering a disclosure. There is also a [link to useful information provided by Nacro](#) (National Association for the Care and Resettlement of Offenders) to help

employers assess what information to consider when determining whether an applicant with a criminal record is suitable for the post applied for.

- 6.5 For an existing employee or worker, their manager must request a DBS check in advance of the new activity commencing. The manager must ensure the individual is fully aware of the level of check being requested.
- 6.6 The manager must complete the online DBS Eligibility Assessment Form with the details of the individual to be checked. The DBS charge for the certificate will be met by the department who will be asked to provide a cost code for the cost of the check on the form.
- 6.7 The HR Administration Team Leader or WMS HR Officer will identify a corresponding role on the umbrella body's 'Online Disclosures' system or request that an appropriate role be set up by them (which may take one week to be set up). These roles do not necessarily correspond to University job titles. They will also identify the type of workforce that a DBS applicant will be working in (adult, child or other).
- 6.8 The HR Administration Team Leader or WMS HR Officer will enter the individual's details onto the online disclosures application system which will generate an email to be sent to the individual to commence the application process.
- 6.9 The individual completes the application form online and arranges to come into HR to have their original ID documents verified against the information that has been completed online.
- 6.10 Once the original ID documents have been verified, the application is submitted electronically by the HR Administration Team Leader or WMS HR Officer to the registered umbrella body to be checked and countersigned and for onward submission to the Disclosure and Barring Service. The HR Administration Team Leader or WMS HR Officer as authorised users of the system can track the progress of the application online. The time taken for a check can be approximately three weeks but may take longer depending on each police force.
- 6.11 A flow chart of the process is provided in [Appendix 2](#).

7. DBS check results

- 7.1 The disclosure certificate is sent directly to the individual only by the DBS. The DBS no longer sends certificates to the requesting organisation as well. Upon receipt, the individual will need to show their certificate to the employer (but a copy of this should not be taken). The certificate will list details of any disclosure which may include information from the Police National Computer, local police information and/or information from the Child's/Adult's barred lists if applicable up to the date that the disclosure is issued. Some information may have been filtered so they are not disclosed on the DBS Certificate (see section 3.8.2).
- 7.2 The registered umbrella body's online system is also updated to show the check has been completed. A report is available for the HR Admin Team Leader or WMS HR Officer as an authorised user to access to

check progress and completion status. This report will only show if the disclosure is clear or not but will include no further details.

- 7.3 If the DBS check result is 'clear', no further action is required, and the department will be informed by HR (even if the individual has already shown the certificate to the recruiting manager). As the check is 'clear', the recruitment process and appointment to the role can continue, or the employee or worker can commence/continue with the role, provided all other required screening checks have also been completed satisfactorily.
- 7.4 If the DBS check result shows 'See Paper Disclosure' then the process for considering content on a disclosure will be enacted. The individual will be contacted to discuss the circumstances in more detail. See [Appendix 3](#) for details of this process.
- 7.5 Having a criminal disclosure will not necessarily bar an individual from working within the University. Depending on the nature of the position and the circumstances and background of the offence(s), a decision will be made by the HR Director (or their nominated delegate) as to the suitability of the individual to carry out or continue in the role. This is detailed in the process for considering content on a disclosure in [Appendix 3](#). Whilst the process is underway, the individual must not commence the role or, if they are an existing employee, undertake any activity that has created eligibility for a DBS check until a decision has been made following the outcome of the content disclosure process. Dependent on the nature of the disclosure, it may be appropriate to suspend an existing employee pending an investigation.

8. Confidentiality, protection and retention of data

- 8.1 Information regarding offences and any other information provided in a DBS disclosure and/or as part of a self-disclosure must be kept confidential and on a need-to-know basis. This is sensitive personal data under the UK's General Data Protection Regulation (GDPR). Access to information held about convictions should be restricted and it is a criminal offence to share this personal data with others who do not need to see the information. There must be a specific legitimate reason for sharing any information. The University protects and retains DBS information securely and in line with the DBS Code of Practice, Principle 7 of the Data Protection Act, GDPR and the University's own Data Protection Policy as well as its responsibilities under the Rehabilitation of Offenders Act.
- 8.2 If the DBS certificate has a disclosure on it, as part of the process to consider a disclosure, details of the offence and the surrounding circumstances will be held securely by HR separate to both the employee file and the HR Management Information System. Access to these documents will be restricted to the HR Director and DBS Leads who have a legitimate need to see it. This is done to ensure that future employment decisions are not informed by information relating to certain spent convictions which the University is no longer legally entitled to know about.

- 8.3 Once a recruitment decision has been made, these records will be retained for no longer than necessary and in line with the University's GDPR Records Retention Schedule and timeframes stated in the DBS guidance. This is usually sufficient time to allow for the consideration and resolution of any disputes or complaints, unless there is good reason to retain information for longer. For example, if the individual is appointed or already employed and is likely to require a further DBS check in line with the University's rechecking policy, retaining the objective assessment will ensure that the individual does not need to undergo the same process again. The individual with a disclosure should be advised by HR as to who within the University will need to know of his/her conviction and the reason why the information has been disclosed.
- 8.4 Electronic files containing DBS and related personal information must follow similar procedures. Sensitive personal information and disclosure details must not be forwarded by email and must be encrypted. Names of individuals must be anonymised when sending by email to protect the individual's identity. Access to information is restricted to only those members of staff who have a legitimate need to see the content. DBS and other such sensitive personal information held in secure electronic files must be reviewed regularly and retained no longer than as stated in the guidance documents, typically six months unless there is good reason to retain information for longer.
- 8.5 No details of the DBS Certificate, any other related personal information or details of the consideration of a disclosure by the HR Director/DBS Leads must be kept locally by departments or services.
- 8.6 Where a DBS check has been undertaken for an individual, the date the check was undertaken will be recorded on the HR Management Information System. This information will be used to generate reports for when follow up repeat checks may be required after three years.
- 8.7 The registered umbrella body who process DBS requests on the University's behalf has access to certain information in relation to the submission of DBS checks requests e.g. name, date of birth, address history. However, they do not have access to the disclosure itself. Full details of the information that is required by the umbrella body in order to request a check can be provided by HR on request.

9. Duty to refer

- 9.1 The University has a legal duty to inform the DBS if an existing employee or worker:
- is removed from working in Regulated Activity because they may have harmed someone
 - is dismissed or permanently withdrawn because they may have harmed someone
 - is dismissed or permanently withdrawn because they had harmed someone
 - is due to be dismissed or permanently withdrawn for either of these reasons but resigned first
 - has harmed or posed a risk of harm to a child or vulnerable adult
 - satisfied the 'harm' test
 - has received a caution or convictions for a relevant offence.

The manager should seek advice from the Safeguarding Lead or their HR Business Partner if they feel this duty may apply.

- 9.2 If a check against a new applicant for a role that has been stated in the advert as working in Regulated Activity with children or adults reveals that the person is barred from working in Regulated Activity with the group they are barred from working with, the University also has a duty to refer this as it is an offence for a person to apply to work with a group which they are barred from working with.

10. Repeat DBS checks

- 10.1 The University has a policy of requesting repeat checks every three years for those individuals who perform roles assessed as being eligible for a DBS check.
- 10.2 Departments will be responsible for regularly running a report which will list those who have previously had a DBS check and when their check is due to expire. This report will be used to confirm whether the activities or role have changed and whether a check is still required.
- 10.3 If the check is still required, the department should instigate a re-check by completing the online DBS Eligibility Assessment Form.
- 10.4 The process detailed in [Appendix 3](#) should be enacted if there is a disclosure as a result of the repeat check.

11. Overseas criminal record checks

- 11.1 The DBS cannot access criminal records held outside of the UK and therefore a DBS check may not provide a complete picture of an individual's criminal records. The DBS advises employers who may recruit employees from overseas and those who have spent a considerable time outside of the UK, to obtain a Certificate of Good Conduct (CoGC) by contacting the Embassy, High Commission or other relevant Authority for the country in question.
- 11.2 The University requires that CoGCs are sought for all periods of six months or more in the last five years that an applicant has lived overseas.
- 11.3 Where a DBS check is required to be undertaken, as part of this process the registered umbrella body identify if the applicant has any overseas addresses in the last five years and will notify HR if this is the case. Upon receipt of the notification of this from the registered body, HR will ask the applicant to obtain a 'Certificate of Good Conduct' by contacting the Embassy, High Commission, or other relevant Authority for the country in question and requesting this. Further details of how the candidate can do this are on the Government site <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>
- 11.4 Where there is a difficulty in the person being able to obtain a CoGC from the relevant Authority because of individual country's practices and through no fault of their own, it may be considered acceptable as an alternative in the circumstances to obtain references from previous employers overseas for this period.

12. Other checks that may be required

- 12.1 In addition to DBS checks, some roles may be also subject to other checks such as the Childcare Disqualification Regulations and the Teacher Prohibition Order checks. Details about these checks are also summarised in the sections below and more detailed information is contained in the appendices.
- 12.2 **Childcare Disqualification Regulation declaration.** This applies to those who regularly provide or are directly concerned in the management of early years' childcare during and outside of school hours and later years' childcare (up to 8 years old) outside of school hours. In the University, this will apply to all staff working in the nursery and would not usually apply to other roles. Full details about the Childcare Disqualification Regulations are listed in [Appendix 4](#). The manager who will be obtaining the Childcare Disqualification Regulations declaration from the individual must indicate this by ticking the relevant box on the DBS Eligibility Assessment Form so that HR can expect receipt of the declaration for the person's file.
- 12.3 The manager of the individual who will be due to work in a relevant setting for this check (nursery, primary or secondary schools where under 8s are in attendance) must request that the person completes a declaration form, affirming that they are not disqualified. See HR for a template of the declaration form. This form will be sent by the manager to HR to be filed on the individual's central HR file. The completed and signed declaration must also be completed for staff already employed if they move into this activity or if their personal circumstances change in respect to relevant matters covered by the declaration form.
- 12.4 **Teaching Prohibition Orders and related checks** apply to those who are teachers and trainee teachers. In the University, these will be in the Centre for Professional Education and the Centre for Lifelong Learning. In addition, departments need to consider if an employee or worker's role will require him/her to carry out any teaching in the establishments listed by the Secretary of State in the Teaching Prohibition Orders. The check must be carried out by eligible employers who have registered with the National College for Teaching and Leadership (NCTL) to check that trainee and qualified teachers are not subject to a Teaching Prohibition Order. The NCTL is the body responsible for maintaining the database of individuals prohibited from teaching in the different types of establishments listed. Full details about the Teaching Prohibition Order checks can be found in [Appendix 5](#). To request a Teaching Prohibition Order check is carried out, contact Student Admissions who carry out these checks and in addition tick the relevant box on the DBS Eligibility Assessment Form so that HR can expect to receive confirmation that this check has been conducted satisfactorily for the person's HR file.

Appendix 1 – Definition of Regulated Activity

The definition of Regulated Activity is set out in the Safeguarding Vulnerable Groups Act 2006 (SVGA) and amended definition in the Protection of Freedoms Act 2012 and refers to such activity relating to children and adults. The University must check if the activity being undertaken is classed as Regulated Activity after reading the definitions. **If any Regulated Activity is to be undertaken, a DBS Enhanced plus the Child's and/or Adult's Barred Lists check must be carried out before an individual can undertake the Regulated Activity.** Someone who is barred from working with children or adults must not be employed to undertake a Regulated Activity and it is an offence for an employer to knowingly employ a barred person in such a capacity. Exceptions to these Regulated Activities include family and personal relationships (non-commercial) and peer group members e.g., a student helping a teacher under supervision.

Regulated Activity in relation to children

A child is defined as someone who is under 18 (or under 16 if the child is employed). A person may be classed as undertaking Regulated Activity because of what they do (specific activities), where they work (specific establishments) or who they are (specified positions). Another key criterion for work to be classed as Regulated Activity is if the contact is regular or 'frequent' and is unsupervised.

Definition of 'Frequent' and 'Overnight' contact

- Contact is regarded as regular or 'frequent' if it is carried out by the same person once a week or more, or 4 or more days in a 30-day period, or overnight (between 2 and 6am). It does not have to be with the same group of children or be carried out in the same establishment.
- For relevant personal care or health care, the activity may be Regulated Activity even if done only once.
- Activity may be classed as Regulated Activity even if done only once at any time 'overnight' (2:00 am to 6:00 am) with an opportunity for face-to-face contact with children.

1) Activity of a specified nature

If carried out by the same person frequently or overnight and is unsupervised:

- Teaching, training, instruction, care for or supervision of children.
- Advice or guidance which relates to physical, emotional or educational well-being.

2) Activity within specified establishment

Any activity that is carried out for, or on behalf of, or in connection with the establishment and gives the person the opportunity for contact with children if carried out frequently.

- Specified Establishments: Nurseries and Nursery Schools, Schools, Pupil Referral Units, Academies, Further Education (FE) establishments mostly for children, Institutions for the detention of children, Children's Homes, Children's Centres in England), children's hospitals (in N Ireland) and childcare premises.
- Paid or regular voluntary work, except any contract for temporary or occasional work (e.g., school maintenance or building contractors).
- Temporary or occasional paid and voluntary teaching, training, instruction etc. in specified establishments, even if supervised as it is an activity of a specified nature (e.g., supply teaching and trainee teachers).

Exceptions

- Work by volunteers under regular day-to-day supervision by another person who is engaging in a Regulated Activity relating to children.
 - Occasional or temporary contract work that is not an activity of a specified nature listed in 1) above.
- 3) Healthcare of a child (any frequency)
- Healthcare provided to a child by a health care professional or by a person acting under the direction or supervision of a healthcare professional.
 - Healthcare includes all forms of healthcare provided for children including physical, mental and palliative health care; diagnostic tests and investigative procedures and procedures like surgical or medical care, but not provided in connection with a medical condition.
- 4) Personal Care of a child (any frequency)
- Physical help with eating or drinking for reasons of illness or disability.
 - Physical help with toileting and menstruation, washing, bathing or dressing for reasons of age, illness or disability.
 - Prompting, supervision, training or advice when a child is otherwise unable to decide for themselves in relation to any of the above personal care activities.
- 5) Moderating an online forum for children
- Moderating a public electronic interactive communication service likely to be used wholly or mainly by children and carried out by the same person frequently. Except activity by a person who does not have access to the content of the matter or with users of the service.
- 6) Driving a vehicle used for conveying children
- Driving a vehicle being used only for conveying children and their carers or supervisors under a contract or similar arrangement when carried out by the same person frequently.
- 7) Day to day management of Regulated Activity (any frequency)
- Day-to-day management of a person who is providing a Regulated Activity in relation to children including the supervisor of a person who would be in Regulated Activity if not under regular supervision.
- 8) Childminding on domestic premises for reward and fostering a child (any frequency)

Supervision

An organisation may decide to appoint a person who is in Regulated Activity to supervise activity by others which would be Regulated Activity had the role not been supervised in this way. The supervision must be regular and day-to-day and “reasonable in all the circumstances to ensure the protection of children”. An organisation is not entitled to request a barred list check on an individual who, because they are supervised, is not in Regulated Activity, however, it is also for the organisation to assess whether supervision meets the requirements outlined in legislation. <https://www.gov.uk/government/publications/supervision-of-activity-with-children>

Further details about Regulated Activity in relation to children are available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/550197/Regulated_activity_in_relation_to_children.pdf

<https://psnc.org.uk/north-yorkshire-lpc/wp-content/uploads/sites/53/2015/09/DBS-Referrals-Guide-Summary-of-Regulated-Activity-with-Children.pdf>

Regulated Activity in relation to adults

The scope of 'Regulated Activity' in relation to adults (a person aged 18 years or older) is defined as 'activities provided to any adult which, if any adult requires them, will mean that the adult will be considered vulnerable at that particular time'.

The Safeguarding Vulnerable Groups Act (SVGA) 2006S no longer labels adults as 'vulnerable adults' because of either the setting in which the activity is received or because of the personal characteristics or circumstances of the adults receiving the activities. Adults should not therefore be labelled as vulnerable adults (as has been the situation previously). For example, in the Birmingham and the West Midlands Multi-Agency Safeguarding Policy the term 'Vulnerable Adult' has been replaced with 'Adult at Risk'. See the link to their policy [here](#).

The following categories are defined as Regulated Activity for adults:

- Providing Health Care.
- Providing Personal Care.
- Providing Social Work.
- Assistance with general household matters.
- Assistance in the conduct of a person's own affairs.
- Conveying (transporting).
- Day-to-day management or supervision of any person who is engaging in Regulated Activity.

An individual only needs to engage in a defined activity once to be considered to be carrying out a Regulated Activity.

Exceptions

Activity carried out in the course of family relationships and personal non-commercial relationships are exempted.

Further information about Regulated Activity for adults can be found here.

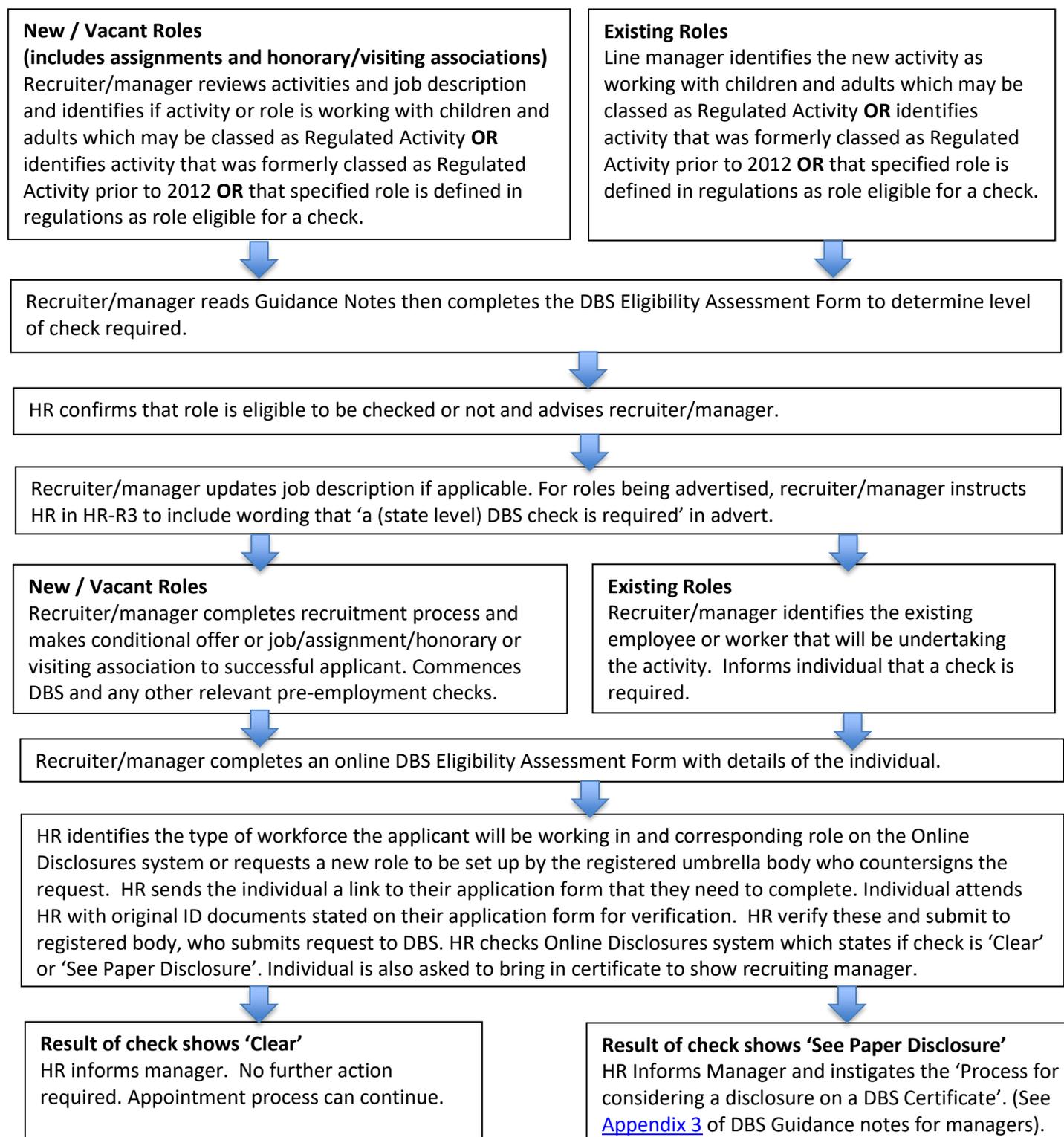
<https://www.gov.uk/government/publications/new-disclosure-and-barring-services>

<https://www.scie.org.uk/care-act-2014/safeguarding-adults/>

Changes as a result of the Protection of Freedoms Act 2012 and pre 2012 definition of Regulated Activity

The Protection of Freedoms Act 2012 made several revisions including revising the definition of Regulated Activity from its previous wider definition and revising the roles that are eligible for DBS checks. The pre 2012 definition of Regulated Activity is given in the Safeguarding Vulnerable Groups Act (SVGA) 2006, Schedule 4 Part 1 and Part 2. The activities which were removed in 2012 from the definition of Regulated Activity are still eligible for enhanced DBS checks but they are no longer eligible for checks against the barred list checks. The University roles and activities have been reviewed in line with these changes.

Appendix 2 – Flow chart process to request a DBS check



Appendix 3a – Objective assessment process for considering a disclosure on a DBS Certificate

- 1.1 In the event of content being disclosed either directly to the University voluntarily by an individual (e.g. via a disclosure on an application form) or on a DBS Certificate (which reveals a conviction, caution, reprimand, warning or any other relevant additional information held by the police, or highlights inclusion in the Children's or Adults' Barred Lists) the following process outlined in the flow chart will be enacted to determine the suitability of the individual for the University role or activity in question. The process will manage and assess the safeguarding risk associated with the applicant commencing or continuing in the role or undertaking the specific activity.
- 1.2 If the person voluntarily discloses information ahead of the DBS check being conducted, you must continue to conduct the check and obtain the outcome in case there are further disclosures which have not been brought to your attention by the applicant.
- 1.3 The details of the disclosure will be objectively assessed against the nature of the role that the individual is undertaking/applying for taking into consideration whether the position requires a DBS check (and if so, at what level). A risk assessment will be conducted by the HR DBS Lead (either the Recruitment Manager or the HR Administration Team Leader). Separately another risk assessment will be conducted by the Student DBS Lead. Both forms will be submitted for consideration to the HR Director or their nominated delegate who will make a judgement on the action to be taken.
- 1.5 The HR Director or delegate will consider the following information when making their decision:
 - The content disclosed on the DBS Certificate (where applicable) and what has been disclosed voluntarily.
 - The job description / description of role / reason for DBS check.
- 1.6 Depending on the personal circumstances of the individual or the nature of the post, this process may also need to include consideration of information associated with:
 - Overseas criminality checks - if the applicant is required to provide a Certificate of Good Conduct (CoGC) due to residency overseas
 - Disqualification under the Childcare Act 2006 - if the nature of the post requires assessment against the criteria for disqualification under the Childcare Act 2006 and Childcare (Disqualification) Regulations 2009.
- 1.7 The objective assessment process applies to both applicants who have not yet started in a role and existing employees, workers and visiting/honorary associates who require a re-check or an initial check as they are undertaking a new activity.
- 1.8 The HR DBS lead may need to contact the individual to gather further information on the nature of the conviction. This should be handled with sensitivity and empathy as discussing past convictions can be a major source of anxiety and embarrassment for the person concerned. In completing their initial assessments, the DBS leads will consider the following:

- Whether there are any discrepancies between the information provided by the applicant and the information on their criminal record check? Did the advert make it clear to the person what was required to be disclosed? Why was there a failure to disclose the information?
- Is the criminal record relevant to the post?
- What is the nature of the offence(s)? Was it one type or a range of different offences?
- What is the seriousness of the offences disclosed? The title of the offence itself without any detail may not reflect the seriousness of the offence (which may be more or less serious than the title alone suggests).
- What was the circumstances of the offence? Were there any mitigating circumstances and the applicant's own circumstances that should be considered?
- Have the person's circumstances changed since the offending took place?
- What is the applicant's attitude to the offence then and now?
- What is the age of the offences and length of time that has passed?
- Whether the individual was a minor when the offence occurred.
- Is there a pattern of offending or is it a single offence? Is there a gap between offences or are they all within a short time period? Have they put offending behind them?

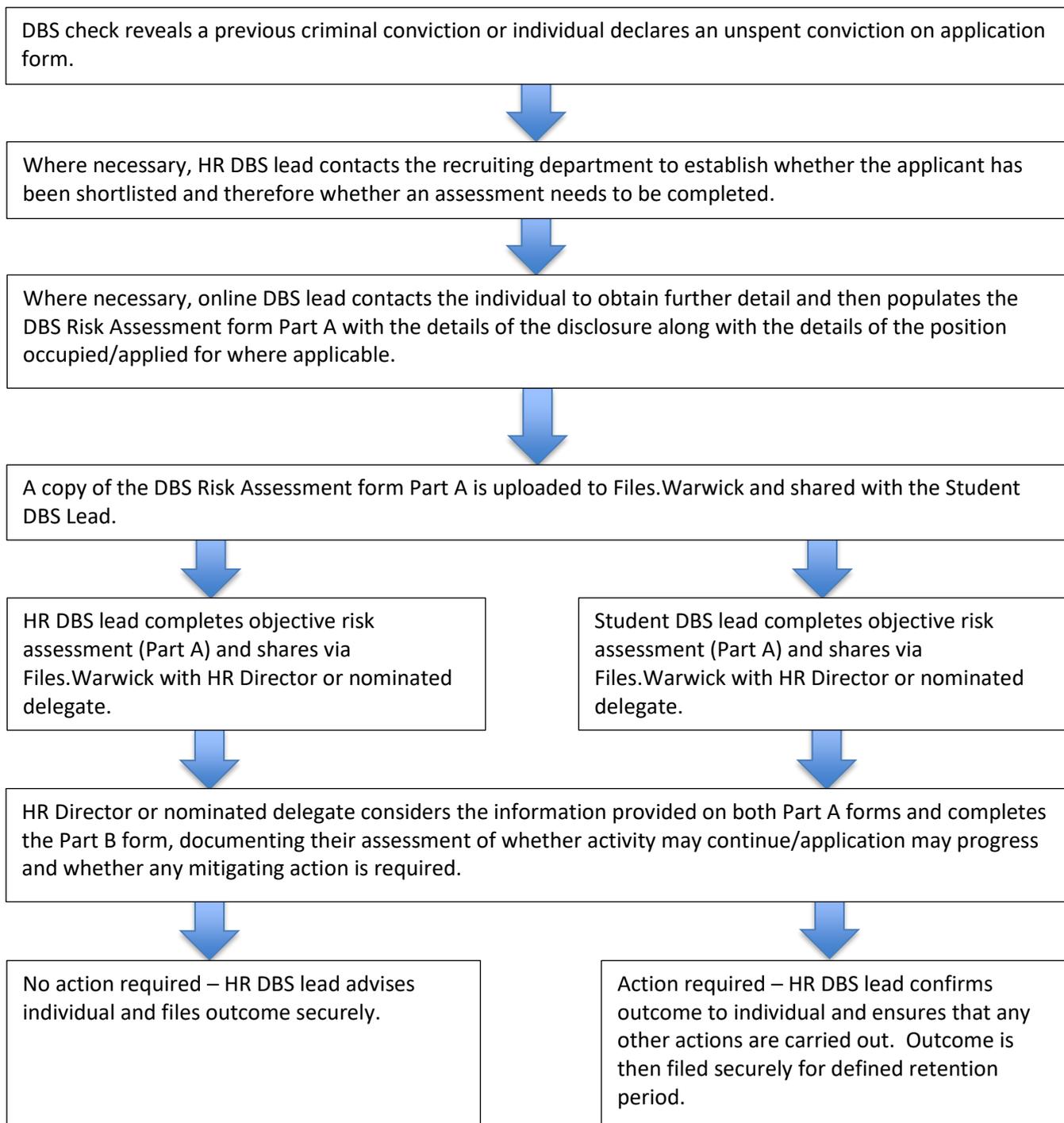
1.9 The role of the HR Director or delegate is to assess the suitability of the individual for the activity or role in question following receipt of the information detailed in the two risk assessment documents.

Questions they must consider include:

- Whether the disclosure is relevant to the position applied for.
- Whether to employ or enable the individual to undertake the activity or role in question.
- Whether there are restrictions on the ability of the applicant to undertake the activity or role in question.
- Whether the individual is suitable for the role / activity in question and the level of risk associated with the appointment.
- The level of risk to Safeguarding which the individual presents.
- The level of supervision in the position and the safeguards that are, or could, be put in place to prevent offending.
- Whether the nature of the post will present any realistic opportunities for the individual to reoffend
- Efforts taken by the individual to avoid reoffending.
- Any mitigating factors presented by the individual.

- 2.1 As part of the objective assessment process, the HR Director or delegate will determine and document the follow-up actions that need to be taken and pass these to the DBS lead for completion. These actions will include:
- Confirmation to the applicant or employee / worker informing them of their decision and whether any further action is to be taken.
 - Checking if there is a specific and permitted reason why someone else within the University outside of the DBS leads will need to know of the person's conviction disclosure together with the reason why the information has been disclosed. If so, ensuring that the individual is made aware of this and the reasons why this information is being shared.
 - Storing the record of information and associated papers to be retained about the decision securely in a file separate to the HR personal record.
 - Ensuring that any subsequent disciplinary or other procedures which may be applicable are enacted by the Recruiting Manager / Line Manager or Human Resources as appropriate.

Appendix 3b Flow Chart – Process for considering disclosure



Appendix 4 – Childcare Disqualification Regulations

The Childcare (Disqualification) Regulations 2009 made under the Childcare Act 2006 set out the circumstances in which an individual is disqualified from providing relevant childcare provision or to be directly concerned in the management of such provision. Schools and Nurseries are prohibited from employing a disqualified person in connection with relevant childcare provision in a specified setting. An employer commits an offence if they employ someone in a relevant role who has been disqualified except if they can prove that they did not know and had no reasonable grounds for believing that the person was disqualified.

This applies to staff, trainee teachers and others who regularly provide, or are directly concerned in the management of:

- **Early Years Childcare** (birth until 1st September following 5th birthday / reception age) including education and/or supervised activity such as breakfast clubs, lunchtime supervision and after school care provided by the nursery or school, **both during and outside of school hours**.
- **Later Years Childcare** (above reception age to 8th birthday) in a school setting, **outside of school hours, including breakfast clubs and after school provision**. This does not include education or supervised activity during school hours, or extended hours for co-curricular activities, such as the school's choir or sports teams.

This Regulation does not apply to staff employed who only provide education, childcare or supervised activity during school hours for children above reception age, or only provide childcare or supervised activities out of school hours for children who are aged 8 or over and are not involved in the management of relevant provision. In addition, it does not apply to caretakers, cleaners, drivers, transport escorts, catering and office staff, who are not employed to directly provide childcare, or to School Governors.

The criteria for disqualification under the 2006 Act and 2009 Regulations include:

- Inclusion on the DBS Children's Barred List.
- Certain violent and sexual criminal offences against children and adults
- Certain Orders made in relation to the care of children.
- Refusal or cancellation of registration relating to childcare, or Children's Homes, or being prohibited from private fostering.
- Living in the same household where another person who is disqualified lives or is employed ('Disqualification by Association').
- Being found to have committed an offence overseas which would constitute an offence under the 2009 Regulations if it had been committed in the UK.

A person is disqualified if they are found to have committed a 'relevant offence' included in the 2009 Regulations, or if have been given a caution, reprimand or warning for a relevant offence after 6 April 2007.

Further details and a list of the relevant offences that lead to disqualification (including Disqualification by Association) are set out in the [2006 Act](#) and the [2009 Regulations](#).

Appendix 5 – Teachers Prohibition Order checks

People subject to a Prohibition Order are listed on a database maintained by the National College for Teaching and Leadership (NCTL) which can be checked by eligible employers who have registered with NCTL. Employers and ITT providers must check that trainee and qualified teachers are not subject to a Prohibition Order.

If a teacher's behaviour has been proved to be fundamentally incompatible with being a teacher, NCTL who is responsible for investigating allegations of serious misconduct against teachers in schools in England can advise the Secretary of State for Education to make a Prohibition Order banning them from teaching in:

- Maintained Schools.
- Academies (including 16 – 19 academies) and free schools.
- Pupil Referral Units.
- Non-maintained Special Schools.
- Independent Schools.
- Sixth-form Colleges.
- Youth Custody settings.
- Children's Homes.

This is a lifetime ban. In some circumstances, the person may request that it is reviewed after a specified period.

A teacher's behaviour is likely to be considered to be incompatible with being a teacher if there is evidence of one or more of the factors below. This list is not exhaustive and the recommendation to the Secretary of State to make a Prohibition Order is made on a case-by-case basis by a NCTL. Factors that are considered include:

- A serious departure from the personal and professional conduct elements of the Teachers' Standards.
- Misconduct seriously affecting the education and/or well-being of pupils.
- Actions or behaviours that undermine fundamental British values of democracy, the Rule of Law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs, or actions or behaviours that promote political or religious extremism.
- A deep-seated attitude that leads to harmful behaviour.
- Abuse of a position of trust, particularly involving vulnerable pupils.
- Dishonesty, especially where there have been serious consequences.
- Sustained or serious bullying, or other deliberate behaviour that undermines pupils, the profession, the school or colleagues.
- Possession of prohibited firearms, knives or other weapons.
- Sexual misconduct e.g., that exploits trust, knowledge or influence derived from the individual's professional position.
- Any activity involving viewing, taking, making, possessing, distributing or publishing any indecent photograph of a child, or permitting such activity.
- The commission of a serious criminal offence particularly offences that are 'relevant matters' for the purposes of The Police Act 1997 and criminal record disclosures.

Information on the Prohibition of Teachers can be found [here](#).