

Disclosure & Barring Checks

Policy and Procedure

1 Background

South Tyneside Council is committed to protecting vulnerable groups including children and to minimising the risk of employing people who are unsuitable to work with those groups.

The Protection of Freedoms Act 2012 outlined changes to criminal records and barring arrangements.

2 Policy

- 2.1 The definition of regulated activity was scaled back in 2012 to focus on work which involves close and unsupervised contact with vulnerable groups including children.

Individuals in posts which this definition of regulated activity will have a DBS enhanced level check as well as a barred list check carried out.

Roles that do not meet the definition of regulated activity may still be eligible for a DBS check at an enhanced level. Details of what makes up regulated activity are outlined below:

- **Standard Disclosure** - shows all spent and unspent convictions, cautions, reprimands and final warnings from the Police National Computer (PNC)
- **Enhanced Disclosure** - shows spent and unspent convictions and cautions. The police may also provide details of acquittals or other non-conviction information held on local police records, which are relevant to the job or voluntary position being sought. Enhanced disclosures are only available to people seeking paid or voluntary work or training in a position whose normal duties include regularly caring for, training, supervising, being in sole charge of or working on a one to one basis with children under 18 years of age or vulnerable adults.

Regulated Activity Relating to Adults

The definition of regulated activity relating to adults identifies the activities which, if any adult requires them, lead to that adult being considered vulnerable at that particular time. This means that the focus is on the activities required by the adult and not on the setting in which the activity is received, nor on the personal characteristics or circumstances of the adult receiving the activities. There are six categories of people who fall within the definition of regulated activity (and so will anyone who provides day to day management or supervision of those people).

Regulated Activity Relating to Adults	
1.	Providing health care Any health care professional providing health care to an adult, or anyone who provides health care to an adult under the direction or supervision of a health care

	professional. Please see the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, for further details about what is meant by health care and health care professionals.
2.	Providing personal care Anyone who: provides physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of an adult's age, illness or disability prompts and then supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without that prompting or supervision or trains, instructs or offers advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability.
3.	Providing social work The provision by a social care worker of social work which is required in connection with any health care or social services to an adult who is a client or potential client.
4.	Assistance with cash, bills and/or shopping The provision of assistance to an adult because of their age, illness or disability, if that includes managing the person's cash, paying their bills or shopping on their behalf.
5.	Assistance in the conduct of a person's own affairs. Anyone who provides various forms of assistance in the conduct of an adult's own affairs, for example by virtue of an enduring power of attorney. Please see the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, for the further categories which are covered here.
6.	Conveying A person who transports an adult because of their age, illness or disability either to or from their place of residence and a place where they have received, or will be receiving, health care, personal care or social care; or between places where they have received or will be receiving health care, personal care or social care. This will not include family and friends or taxi drivers.

Regulated Activity Relating to Children

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 excludes family arrangements and personal, non-commercial arrangements.

Regulated activity relating to children		Frequency criteria to be applied
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	Once a week or more often or 4 or more days in a 30-day period
2.	Work for a limited range of establishments ('specified places'), with opportunity for contact e.g. schools, children's homes, childcare premises. Not work by supervised volunteers	Overnight between 2 am - 6 am and the opportunity for face to face contact

3.	Relevant personal care e.g. washing or dressing or health care by or supervised by a professional	N/A
4.	Registered childminding and foster-carers	N/A

Having considered all other regulated activity criteria relating to children the postholder **does not** need to work with the same children to meet the frequency or period condition. Nor do they need to work in the same establishment if they are sent to work by an organisation who authorises that work.

- In addition, there are a number of defined “office holders” position, where a prescribed post-holder is deemed as engaging in regulated activity irrespective of their actual contact with vulnerable groups. This list includes such people as a Local Authority Director of Children’s Services, trustees of children’s charities and people who have access to adoption and fostering databases.

No distinction is made between paid and voluntary work.

- 2.2 The criteria apply equally to all types of employment, whether an established post, such as permanent, temporary, casual, supply, volunteer/unpaid or self employed.
- 2.3 It is the responsibility of the relevant Director/Head Teacher to ensure full implementation of this policy within their service/school.
- 2.4 HR Services are responsible for carrying out the DBS Disclosure check for all new employees and rechecks for existing employees on behalf of the service/school. They are also responsible for recording the details of the check and recheck on the Council’s HR and Payroll System.
- 2.5 The Council, or the Governing Body in the case of an aided school, or the trustees in the case of an academy school, remains accountable for ensuring HR Services discharges its responsibilities under this policy and for making decisions about the suitability of individuals to carry out their duties.

3 Volunteers

- 3.1 Many adults regularly offer their services on a voluntary basis. A DBS Disclosure will be required if the work involved meets the definition of regulated activity.
 - 3.2 Under no circumstances must a volunteer who does not have an enhanced DBS Disclosure and Barred List Check be left unsupervised with children, young people and/or adults.**
 - 3.3 As a general rule, ‘regular’ contact means once a week or more, 4 or more days in a 30-day period, overnight between 2a.m - 6 am and the opportunity for face to face contact. Managers and Head Teachers must consider the duration, frequency and nature of the contact with children, young people and/or vulnerable adults.
 - 3.4 Please speak to HR Services for advice whether a DBS is required. If a DBS Disclosure is required, it is the responsibility of managers and, in the case of schools, Head Teachers, to notify HR Services. HR Services are responsible for carrying out the DBS Disclosure check, and for advising managers/Head Teachers of the outcome of the disclosure.
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- 3.5 The volunteer's DBS Disclosure number and date will be held on the Council's HR and Payroll system, which is managed by HR Services, and the schools should record it on their single central record. DBS rechecks for all volunteers working with children, young people and/or vulnerable adults who meet the criteria outlined above will follow the same rechecking procedure as for paid employees (i.e. every three years). It is the responsibility of the manager/school to inform HR Operations if a recheck is required for a volunteer.

4 Governors

- 4.1 The position of Governor does not automatically require a DBS Disclosure; however, the Council requires all Governors to obtain an enhanced DBS Disclosure.
- 4.2 The Council's Governor Support Service is responsible for advising HR Services when a new Governor is appointed. HR Services are responsible for carrying out the DBS disclosure check and for advising Governors Support Service of the outcome of the disclosure.
- 4.3 The Governor's DBS Disclosure number and date will be held on the Council's HR and Payroll system and logged on the Governors Administration and Training System (GATS). Schools should also record this information on their single central record but must also sight the original DBS certificate in line with Keeping Children Safe in Education.
- 4.4 Governors who are re-appointed or re-elected to serve a further term of office and hold a current DBS Disclosure, will not be required to obtain a new DBS on appointment but will be subject to three yearly checks.

5 Agency (Supply) Staff

- 5.1 It is important that thorough checks are made on all those who work with children, young people and/or vulnerable adults, to include supply and agency staff. Before taking on an individual from an employment or supply agency, the manager or Head Teacher **must** obtain written confirmation from the agency that appropriate checks have been carried out in relation to the individual concerned, if applicable.
- 5.2 If a trace is revealed, on a DBS certificate, the agency must supply the manager/Head Teacher with a copy, therefore allowing an assessment of risk to be undertaken before making use of the agency staff member.
- 5.3 In relation to the DBS Disclosure, the written notification from the agency must confirm that a relevant DBS Disclosure has been obtained, if applicable. Schools must record this information on their single central record.
- 5.4 Managers are responsible for ensuring that agency workers working within their teams have a recent DBS Disclosure, if applicable.

6 Overseas Workers

- 6.1 Newly appointed employees in posts, which meet the definition of regulated activity require a DBS Disclosure. In addition, managers and Head Teachers must make such further checks as they consider appropriate due to the person having lived outside the
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United Kingdom.

- 6.2 DBS Disclosures will not generally show offences committed by individuals whilst living abroad (except in the case of service personnel and their families). Therefore, in addition to an enhanced DBS Disclosure, additional checks must be carried out, such as obtaining certificates of good conduct from relevant embassies or police forces, which is the responsibility of the employee. The level of information contained in these certificates varies from country to country; some are complete extracts from the criminal record, others are partial.
- 6.3 Further detail about the criminal record information which may be obtained from overseas police forces and countries is available from the DBS at www.gov.uk/db
- 6.4 Employers must confirm the right of those they employ to work in the United Kingdom. Further information and details on work permits and immigration requirements can be obtained from HR Services.

7 Procedure – New Employees

7.1 The procedure to be followed is as follows:

- The relevant Director is responsible for maintaining an executive overview of those posts within their Service that requires DBS clearance, and at what level. Managers and Head Teachers are responsible for determining whether an individual post requires clearance (see Section 2). The details of such posts are retained by and are available from HR Services.
 - The recruitment advertisement must clearly state that the post is subject to an enhanced DBS Disclosure.
 - The successful candidate will be required to declare any relevant convictions, adult cautions or other matters which may affect their suitability to work with children and/or adults. As a result of amendments to the Rehabilitation of Offenders Act 1974 (exceptions order 1975) in 2013 and 2020, some minor offences are now protected (filtered) and should not be disclosed to potential employers, and employers cannot take these offences into account. For further information on filtering and protected offences visit www.gov.uk/government/publications/db-filtering-guidance
 - If the successful candidate has registered with the DBS Update Service, they must take their original registered DBS certificate, attached to their subscription, to the HR Operations Team. Or:
 - The successful candidate must complete a disclosure form via the NEREO DBS portal and provide the necessary evidence for verification to the recruiting manager/Head Teacher or HR Services within 5 days of the request to do so.
 - The recruiting manager/Head Teacher or HR services will update the application on the NEREO DBS portal to confirm they have undertaken the ID document verification checks.
 - NEREO will countersign the disclosure and it will be submitted via the portal to the DBS
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- HR Services will be updated via the NEREO DBS portal once a check has been completed and if it is clear or not. HR Services will advise the manager/Head Teacher where the check is clear. Schools, in line with Keeping Children Safe in Education, are required to sight the original DBS certificate and update their Single Central Record. Where a check is identified as not clear, i.e. there is a caution, conviction or additional information on the DBS disclosure, the applicant is required to produce the original certificate to HR Operations for processing within 14 days.
- A copy of the certificate will be kept until a decision is made on the appointment. It will be stored in a locked cabinet.
- If the disclosure is satisfactory, HR Services will send a summary letter to the recruiting manager/Head Teacher confirming the date and DBS Disclosure number. A copy of this summary letter will also be retained on the personal file which is held by HR Services.
- The employee's DBS Disclosure number and date will be held on the Council's HR and Payroll system which is managed by HR Services and Schools should make arrangements for this information to be recorded on their single central record.
- If the disclosure is unsatisfactory, please refer to section 14.

8 Procedure – employees with more than one job

- 8.1 Where an employee is carrying out more than one job and a new DBS Disclosure needs to be obtained, one DBS form can be completed and include all the job titles.
- 8.2 In line with the guidelines on portability described below, where an employee already has a current DBS Disclosure and then takes up an additional post, where the post is of a similar nature a new DBS is not necessary, unless requested by the manager or Head Teacher. If the additional post involves work with an additional group i.e. children in addition to adults or vice versa then a new disclosure will be required.

9 Portability

9.1 External Portability

Employees joining the Council or one of the Borough's schools from a different organisation must have a new DBS Disclosure regardless of the date of any previous disclosure from another organisation or Local Authority.

9.2 Internal Portability

- 9.2.1 **Employees/Teachers/School Support:** Where an employee, teacher or member of school support moves teams, within the Council or schools within the Borough, but still carries out the same job, a new DBS check will not be required, unless a school/manager specifically requests this. As this is still the same job the three-year rechecking procedure will apply.
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- 9.2.2 **Teachers:** a teacher who stays at the same school or moves schools to undertake a different job e.g. a promotion, a new DBS check will not be required. The three-year rechecking procedure will apply.

9.3 **Governors**

- 9.3.1 Newly appointed governors, who do not already hold a current and relevant DBS check with the Council, will require a new DBS Disclosure
- 9.3.2 Newly appointed governors who already hold a current and relevant DBS check with the Council will not require a new check, but the three-year rechecking procedure will apply.
- 9.3.3 Current governors who are appointed to more than one governor post are not required to obtain a new DBS disclosure. Governors who are appointed to more than one governing body may use the same DBS Disclosure. This applies to schools within South Tyneside only. They may use the same DBS Disclosure if it is current. The three-year rechecking procedure will apply.

10 **Starting Work Pending a DBS Disclosure**

- 10.1 Successful candidates for posts subject to a DBS check should not start work until a satisfactory DBS Disclosure certificate has been received. However, managers and Head Teachers have discretion to allow an individual to begin work pending receipt of the DBS Disclosure but must ensure that the individual is appropriately supervised, the DBS form has been sent to the DBS, other pre-employment checks have been completed and the Teacher's pensions online children's barred list is checked (this covers the Children's list as well as any residual list 99 bars). In these instances, a risk assessment form (Appendix A) should be completed by the appropriate Head Teacher and a copy sent to HR Services before the employee starts work.
- 10.2 For all employees who begin work without a DBS Disclosure it must be made clear to them that they are subject to additional supervision. The nature of the additional supervision must be specified and the roles of staff undertaking the supervision made clear. The arrangements must be recorded, on the DBS risk assessment, and regularly reviewed, at least every two weeks, until the DBS Disclosure is received. HR Ops will write and inform the employee of the additional supervision, and make it clear that their employment is still conditional upon receipt of satisfactory checks.

11 **Rechecking Procedure**

- 11.1 In May 2008 the Council implemented a rolling programme of DBS Disclosures in accordance with this policy. HR Services will carry out rechecks on the Council's behalf at three-yearly intervals.
- 11.2 The confirmation offer letter for all new employees in posts identified as requiring a DBS Disclosure will state the following:

"Your continued employment in this post is subject to satisfactory standard/enhanced DBS Disclosure check at three-yearly intervals. If unsatisfactory information is received your continued employment will need to be considered, the outcome of

which may be dismissal. You are referred to the Council's DBS and Disciplinary Policy and Procedure for details."

11.3 If an existing employee refuses to apply for a recheck, fails to provide the relevant documents to enable a recheck to be done, or fails to bring in their certificate where necessary the relevant manager/Head Teacher will invite the employee to a meeting to discuss their concerns. If the employee continues to refuse to comply with the requirement, he/she will be required to attend a disciplinary hearing to consider their continued employment in the post, in accordance with the Council/School's Disciplinary and Dismissal Policy and Procedure. If it is reasonably believed that the recheck has been unable to be undertaken due to the action of the employee the relevant manager/Head Teacher may determine that the individual has made themselves unavailable for work and request that the employee remains away from work without pay until this is resolved. A DBS Risk Assessment should be completed, by the manager/Head Teacher, if the recheck process is not completed prior to the expiry of the old certificate.

11.4 The options to be considered will be either:

- (a) Dismiss the employee from his/her existing post with an offer of re-engagement to a different post which does not require a disclosure check; or
- (b) Dismiss the employee from his/her existing post with immediate effect.

Any dismissal appeal will be in accordance with the Council's/School's Disciplinary and Dismissal Policy and Procedure.

11.5 The re-checking procedure also applies to Governors.

12 Considering the Relevance of Criminal Records

12.1 When an applicant for, or an existing employee in, a post which is exempt under the Rehabilitation of Offenders Act 1974 receives a DBS Disclosure containing details of a criminal record, an objective assessment must be made as to their suitability for the post. This assessment must be approved by the relevant Director to ensure consistency of approach.

12.2 The Head Teacher must invite the individual to a meeting, Appendix C, to discuss the matter and undertake a risk assessment. An HR Advisor may be present at the meeting – if no such representative is present, the Head Teacher must arrange for another appropriate member of staff to attend the meeting in the capacity of note taker.

12.3 The Head Teacher must consider the following in reaching a decision on how to proceed:

- Does the post involve one to one contact with children, young people and/or vulnerable adults?
 - What level of supervision will the post holder receive?
 - Does the post involve direct contact with the public?
 - Does the post involve any direct responsibility for finance or items of value?
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- Will the nature of the job present any opportunities for the post holder to reoffend in the place of work?
- The seriousness of the offence(s) and its relevance to the safety of other staff, customers, clients and property.
- The length of time since the offence(s) occurred.
- Any relevant information offered by the individual about the circumstances which led to the offence being committed, for example the influence of domestic or financial difficulties.
- Whether the offence was a one-off, or part of a history of offending.
- Whether the individual's circumstances have changed since the offence was committed, making reoffending less likely.
- The country in which the offence was committed i.e. some activities are offences in Scotland and not in England and Wales, and vice versa.
- Whether the offence has since been decriminalised by Parliament.
- The degree of remorse, or otherwise, expressed by the individual and their motivation to change.

12.4 This list is not exhaustive and other matters may be taken into consideration.

- For existing employees, depending on the seriousness of the convictions/information received, consideration should be given to applying the Council's/School's Disciplinary and Dismissal Policy and Procedure. HR Services can give you further advice on this.
- For new employees depending on the seriousness of the conviction/information received, consideration should be given as to whether to withdraw the offer of employment. HR Services can give further advice on this.

12.5 Any convictions relating to child protection issues must be considered in conjunction with the Council's Safeguarding Manager/Local Authority Designated Officer (LADO).

12.6 The outcome of the meeting must be documented and signed on the Record of Decision Regarding DBS Disclosure Form, Appendix B. This form must then be ratified by the appropriate Director and a copy sent to HR Services.

13 Equality and Diversity Statement

13.1 South Tyneside Council/Governing Board is committed to promoting equality and valuing diversity. An equality check of this policy was carried out in 2023 and no equality check implications were identified.

Policy approved by Governors:	Nov 2023
Date of next review by Governors:	Nov 2024