



## DISCLOSURE & BARRING SERVICE (DBS) POLICY

*This policy sets out the guidance relating to DBS disclosures for current and prospective employees*

Our objectives:

This policy sets out the statutory rights and responsibilities of employees of Boston Borough Council relating to DBS disclosures.

We recognise that, from time to time, employees may have questions or concerns relating to their rights. It is our policy to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible.

This procedure applies to all employees of Boston Borough Council.

### Principles

This policy incorporates the following principles.

- **Good faith**  
This policy and procedure will be applied in a consistent manner and without discrimination.
- **Fairness**  
Any action taken will be reasonable and necessary. Members of staff involved are entitled to be heard with courtesy and respect.
- **Confidentiality**  
Information relating to DBS disclosures will only be shared with individuals who have a need to know.
- **Representation**  
If issues arise within these procedures and a formal approach is required to deal with them, employees will be entitled to be accompanied by a trade union representative or by a work colleague.

### **Version History**

<b>Version</b>	<b>Author</b>	<b>Reason For Issue</b>
July 2005	People Services	New policy
March 2013	People Services	Changes to disclosure & barring

### **Document Distribution**

<b>Name</b>	<b>Role</b>
JCC	For consideration of amendments for policy
CMT	For approval of amendments to policy
HOST	For implementation.
All staff	Revised scheme/ staff benefit.

### **Document References**

<b>Reference</b>	<b>Document Title</b>

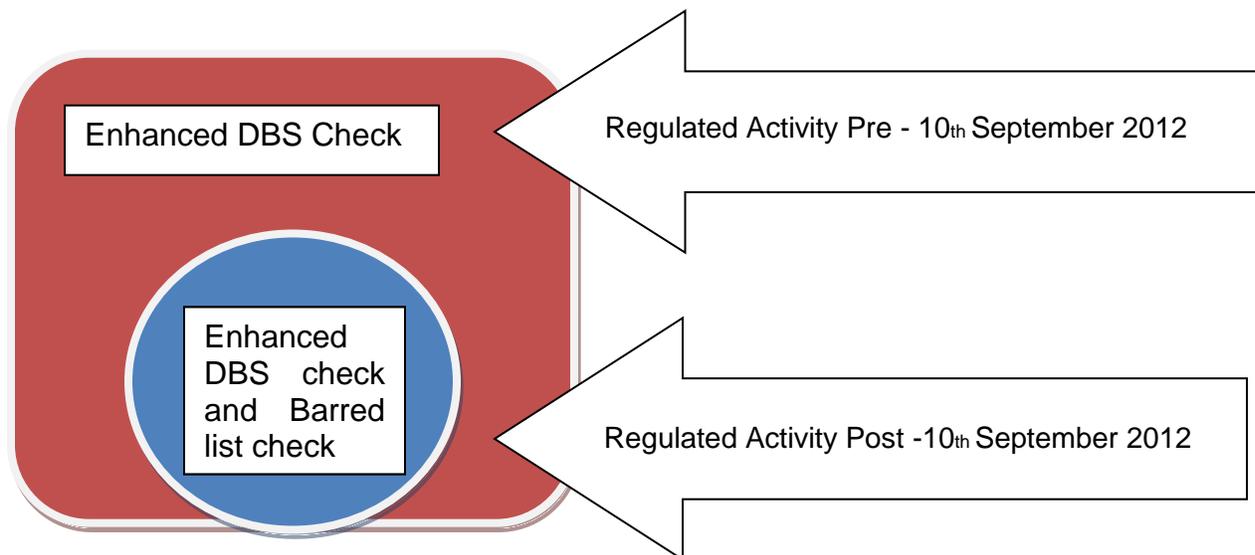
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## **INTRODUCTION**

Boston Borough Council is committed to safeguarding the welfare of those accessing our services and has a statutory duty of care towards vulnerable members of society under the Safeguarding Vulnerable Groups Act (2006) and the Exceptions Order to the Rehabilitation of Offenders Act (1975). However, this duty must be carried out with due regard to all other relevant legislation including the Protection of Freedoms Act 2012, the Rehabilitation of Offenders Act (1974), the Data Protection Act (1998), the DBS Code of Conduct and the Human Rights Act (1998). A description of each piece of key relevant legislation can be found in [Appendix E: Relevant Legislation](#)

This policy outlines the council's procedure for obtaining criminal record disclosure (DBS) checks.



As a manager you should begin by looking at [Appendix B](#) to establish if a position comes under the definition of regulated activity and is therefore entitled to an Enhanced check for Regulated Activity.

It is an offence for individuals on the Barred List to apply for posts in regulated activity. The fact that someone is on the Barred List will not be stated on an Enhanced DBS check, but there will be details of criminal convictions that would indicate that someone might be on the Barred List. If any such disclosures are received People Services will investigate thoroughly and complete [Appendix D: Cause for Concern Risk Assessment Proforma](#).

# 1. Who does this policy apply to?

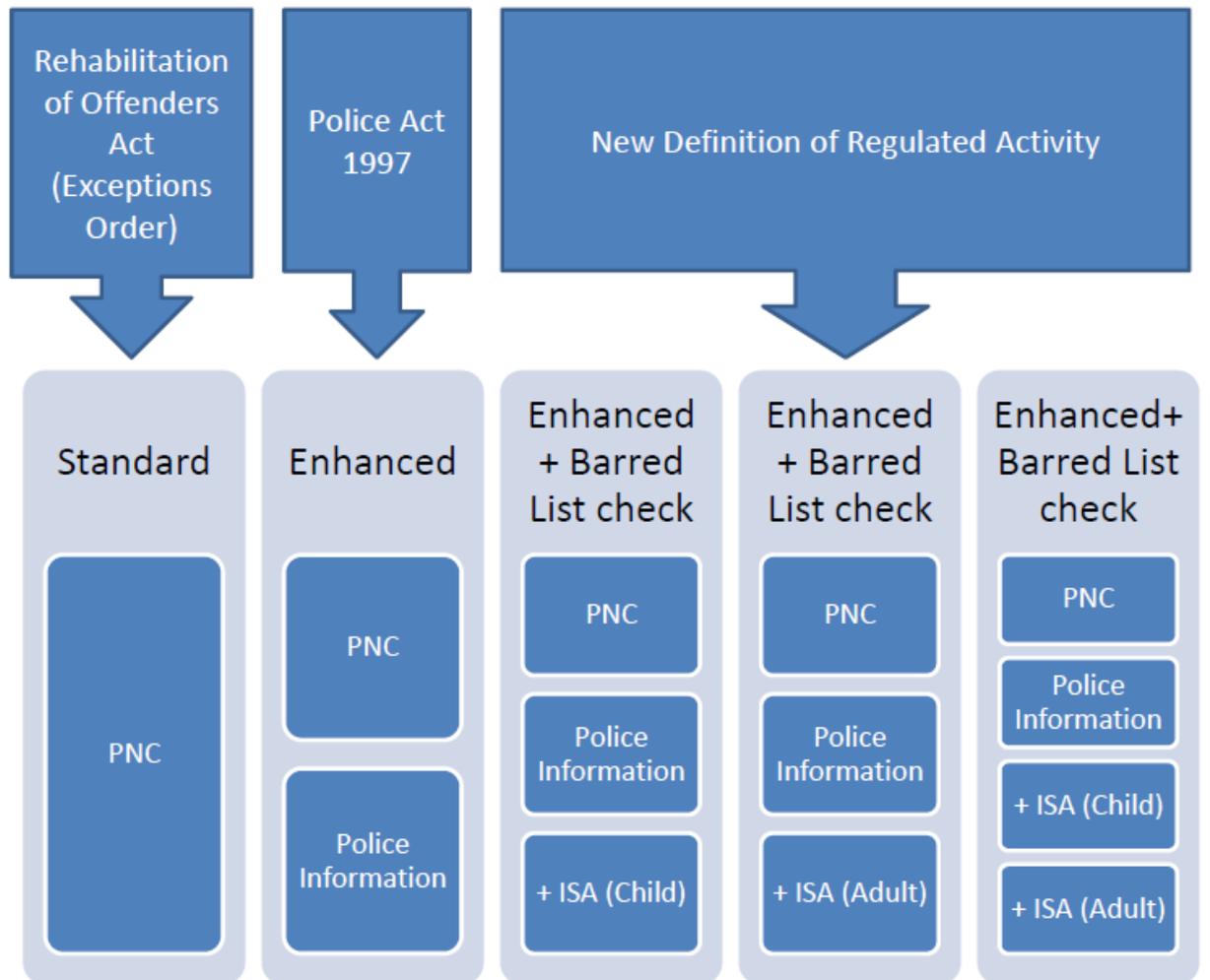
This policy applies to anyone applying for or working in roles providing specific services relating to:

- Children; or
- Adults (only those who may require certain services which lead to that adult being considered vulnerable at that particular time)

It applies to job applicants, current employees and any other individuals e.g. volunteers who will be or who are engaged in “regulated activity”. However the minimum age that someone can have a DBS check is 16 years old. Council countersignatories will not be able to countersign an application for anyone under the age of 16.

At present, for some roles requiring a DBS check, a re-check must also be carried out every three years.

The types of checks available and the relevant legislation is as listed below:



## **2. What are the legal requirements for an enhanced DBS check?**

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

The Council will only ask for an Enhanced DBS check when it is not an offence under the Police Act 1997 to do so.

We are entitled to ask all post holders in these posts to undertake an Enhanced DBS check but not all these posts are now entitled to a Children or Adult Barred List check (See below for further details).

All job descriptions for posts across the Council will identify whether they:

- Require a DBS check at the start of an employment.
- Require a three yearly DBS check.
- Do not require a DBS check

And will include where there is a requirement for a Barred List check , stating whether:

- No Barred List check required.
- Children's Barred List check required.
- Adults Barred List check required.
- Children's & Adults Barred List check required.

A list of positions within Boston Borough Council that are subject to Enhanced DBS or an Enhanced check for Regulated Activity is stated at [Appendix J](#).

## **3. What are the legal requirements for an Enhanced Check for Regulated Activity**

Where an individual occupies a role that meets the definition of undertaking "regulated activity" an application will be made for an enhanced DBS check and a relevant (Adult or Children) Barred List check (an Enhanced check for Regulated Activity).

The full, legal definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012. For information on the new definition of regulated activity and posts for which a check can be made against the barred list, please see [Appendix B](#): Posts requiring an Enhanced check for Regulated Activity.

#### **4. What is the definition of young people / children?**

A person who is under the age of 18.

#### **5. What is regulated activity in relation to children?**

Regulated activity relating to children is defined as work that a barred person must not do. It is as follows:

##### Category 1:

- Teaching, training, instructing, caring for or supervising children in an unsupervised capacity;
- Providing advice/guidance on well-being to children in an unsupervised capacity;
- Driving a vehicle for children only in an unsupervised capacity;
- Work for a limited range of establishments (specified places) with opportunity for contact.
- It is work that is done on a 'regular' basis i.e. one or more times a week or on 4 or more days in a 30-day period.

##### Category 2:

- Relevant personal care e.g. washing or dressing a child; or healthcare by or supervised by a professional, even if done only once
- Registered childminding
- Foster carers.

A DBS check is not required in respect of the activities in categories 1 and 2 if the person undertaking these activities:

- is supervised at a reasonable level (refer to guidance on supervision).
- is providing treatment or therapy (instead of 'health care').
- Is a supervised volunteer – supervised at a reasonable level
- Is carrying out occasional or temporary services e.g. window cleaners.
- Is an office holder e.g. governors

#### **6. What is the definition of a vulnerable adult?**

A vulnerable adult will be aged 18 years or over. An adult may be considered to be vulnerable at the time they require certain services provided to them for:

- accommodation and nursing or personal care in a care home; or
- personal care in their own home through a domiciliary care agency; or
- health care services provided by an independent hospital, independent clinic, independent medical agency or National Health Service body; or
- is an expectant or nursing mother living in residential care;
- is receiving direct payments from the council in lieu of social care services; or
- services provided in an establishment catering for a person with learning difficulties.

and in consequence of any one, or any combination, of the following factors:

- a substantial learning or physical disability; or
- a physical or mental illness, chronic or otherwise, including an addiction to alcohol or drugs; or
- a substantial reduction in physical or mental capacity due to advanced age;
- they are substantially dependent upon others in performing basic physical functions, or their ability to communicate with those providing services or to communicate with others is severely impaired, and, as a result, they would be incapable of protecting themselves from assault or other physical or mental abuse, or there is a potential danger that their will or moral well being may be subverted or over powered.

## **7. What is regulated activity in relation to vulnerable adults?**

Regulated activities relating to adults is outlined below. There is no requirement to carry out these activities a certain number of times before a person is deemed to be engaging in regulated activity with vulnerable adults:

- Work undertaken by regulated health care professional e.g. health care assistants, physiotherapists.
- Work undertaken by a person under the direction or supervision of a health care professional
- Personal care provided to an adult e.g. assistance with washing and dressing, eating, drinking and toileting or teaching someone to do these tasks
- Social work: provision by a social care worker of social work which is required in connection with any health services or social services.
- Providing assistance to an adult e.g. with a person's cash, bills or shopping because of their age, illness or disability e.g. collecting a pension
- Providing assistance with the conduct of an adult's own affairs e.g. lasting or enduring powers of attorney or deputies appointed under the Mental Health Act
- Conveying adults for reasons of age, illness or disability to, from or between places where they receive healthcare, personal care or social work.

## **8. What if I want to move into a role which requires a DBS check when I haven't needed one before?**

If you are moving from a role where a DBS disclosure check is not needed into a new role which is a regulated activity you will not be able to start work in the new role until a DBS disclosure check has been obtained. This will include if you are currently working in a role supporting children moving to a role supporting vulnerable adults or vice versa.

## **9. What if legislation changes the eligibility of my role for a DBS check?**

Where, due to changes in legislation, any roles within Boston Borough Council become subject to regulation for the first time, the Council will write to existing employees in those roles informing them of the requirement to obtain an Enhanced DBS check or Enhanced check for Regulated Activity. All employees will be expected to comply. Any existing

employee refusing to comply with the request for an enhanced DBS check or Enhanced check for Regulated Activity will be advised that their deliberate and unreasonable refusal to carry out lawful and safe instructions issued by an appropriate manager and/or to comply with a contractual agreement will lead to the employee being subject to a disciplinary investigation.

#### **10. How do I know if a new post needs a DBS check?**

If a manager has a new post which they believe requires an Enhanced DBS check/ Enhanced check for Regulated Activity they should complete the pro-forma at [Appendix K](#) and check this with People Services who will confirm whether the post is eligible for a DBS check. If People Services believe it would be illegal to request a DBS check they will ask for the managers' rationale behind their request and clarify the parameters for which the Exceptions Order can be applied. If the manager disagrees, they can ask the People Services Manager to refer the details of the post in question through to the DBS for a final decision. This is because employers who knowingly request checks for positions which are not eligible leave themselves open to legal challenge, so the Council must ensure they do not undertake any illegal DBS checks.

#### **11. How is DBS relevant to undertaking Recruitment?**

All recruitment will be in line with the Councils Recruitment Policy (HR043).

Where a post is identified as one that requires an Enhanced DBS check, or an Enhanced check for Regulated Activity, all application forms, job adverts and recruitment literature will contain a statement advising that this will be requested in the event of the individual being offered the position. The job description will also state the requirement for a DBS check. Applicants should be made aware that enhanced disclosures might include non-conviction information from local police records if the police "reasonably believe" the information is relevant to the post in question.

We will make every subject of an Enhanced DBS check aware of the existence of the DBS Code of Practice. Where an Enhanced DBS check is to form part of the recruitment process, we will ask all applicants to "self disclose" details of their criminal record at an early stage. This information will only be seen by those that need to as part of the recruitment process. Failure to reveal information that is directly relevant to the position sought may lead to the withdrawal of an offer of employment.

#### **12. What should Managers know about DBS and Agency workers?**

The agency is legally the employer of any agency workers and the responsibility to obtain a relevant DBS check or an Enhanced check for Regulated Activity is theirs. This check can then be used within any organisation that the agency provides workers to work within. Our agency managed service provider (currently Manpower) undertakes annual audits of the agencies to ensure they are compliant with our safeguarding requirements.

When using an agency worker, the ordering Manager/Supervisor should ask to see written confirmation from the agency or a copy of the DBS check (this should be no more than three years old), to ensure that each worker supplied to them has had a satisfactory DBS check and checks against the Children's and/or Adult's barred list

### **13. How will recruitment of Ex-Offenders work?**

Boston Borough Council has a policy ([Appendix H](#)) on the Recruitment of Ex-Offenders, you should refer to this for further details.

We will not employ someone to work in Regulated Activity with children if they have been barred through the DBS Children Barred list, or someone to work with adults if they are barred through the DBS Adult Barred List. The Council would be breaking the law if we did so. Conversely if we receive an application from a person barred from working with children or adults they are breaking the law if they work/volunteer or seek to work/volunteer with these groups and we will report them to the relevant Authorities.

We will use an Enhanced check for Regulated Activity as one part of a range of safeguarding tools for assessing the suitability of preferred candidates, volunteers, contractors, agency workers, those transferring within the Council and the continued employment of those in specific roles which require re-checking. Other tools include thoroughly confirming identity, qualifications, taking up and verifying references and examining dates of employment histories on application forms.

### **14. What if I have TUPE transferred to Boston Borough Council?**

Where employees transfer to Boston Borough Council as part of a service transfer under the Transfer of Undertakings (TUPE) Regulations, the DBS disclosures of such staff will transfer to Boston Borough Council. Where necessary DBS re-checks will be undertaken on those transferred staff whose DBS checks are older than 3 years at the point of transfer.

### **15. What if I have only just been checked through DBS and join Boston Borough Council in a position requiring a check?**

At present we will not accept an Enhanced DBS check or Enhanced check for Regulated Activity obtained by an applicant from their previous employer as a disclosure is technically out of date on the day it is issued (i.e. new or further criminal conviction, caution, etc. will not be recorded against the individual after the issue date). However you should be aware of the changes to this detailed below:

**Portable DBS checks:** The Protection of Freedoms Act 2012 includes provisions to effect changes relating to Disclosure and Barring Service (DBS) checks). Once a DBS check has been completed, the results will be available online for employers to confirm that no new information has been added since the check was originally conducted. This will mean that DBS checks are portable, and that an employee will not have to have a new check every time he or she starts a new job. Portable DBS checks will be free for volunteers.

## **16. What are the fees relating to DBS checks?**

As a current or prospective employee the Authority undertakes to fund the cost of required checks, so there is no cost to you, whether these are first checks or re-checks being carried out.

DBS checks are free of charge to volunteers.

## **17. What is the role of the evidence checker at the Council?**

This role will usually be undertaken by the People Services Administrator, however one of the countersignatories could act as evidence checker. They will check the documents of the individual and ensure that the correct documents are viewed. A copy of these documents will be retained on the personnel record of the individual. Full guidelines on the documents which can be used and how to check them is available at [Appendix C](#).

## **18. What is the role of the Countersignatory at the Council?**

They will ensure each individual application is eligible for a DBS disclosure check, first checking that:

- the position applied for is in 'regulated activity';
- it has a specific category code under which the position is eligible for a DBS check;
- an explanation can be given as to why this category code applies to the position in question;
- They may need to verify information with recruiting managers to ensure that each check is an eligible one;
- will comply with the DBS guidelines and regulations as part of its role as a registered body;
- They will strive at all times to ensure that all applications are legitimate applications based on the specific DBS category codes.

## **19. What information do you need from me to process a DBS application?**

The list of documents which can be used to confirm your ID can be found at [Appendix C](#)

## **20. When should a Manager allow a prospective employee to start without the relevant DBS check in place?**

In order to protect children and vulnerable adults this will not be an option in any circumstance.

## **21. What if I am an applicant and my DBS check reveals details of convictions?**

If a DBS check reveals details of convictions which may render you unsuitable for the applied post – termed "Cause for Concern" - the appointing manager and a representative of People Services will discuss the situation with you in line with the DBS Code of Practice

and through use and completion of [Appendix D](#): Cause for Concern Risk Assessment Proforma. You will be asked to sign the completed risk assessment to verify the information provided and give permission for the risk assessment to be stored securely and later destroyed in accordance with [Appendix G](#): Policy on the secure storage, handling, use, retention and disposal of disclosures and disclosure information.

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

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

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

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

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

## **22. What if I am an employee and my DBS check reveals details of convictions?**

Where existing employees, who have not been previously checked, or their post requires a re-check and subsequently have an adverse disclosure result, the manager should follow the guidance in section the question above, complete [Appendix D](#): Cause for Concern Risk Assessment Pro-forma and discuss the contents of the check with a People Services Advisor. It may be appropriate to move you to an alternative post with no access to children and/or vulnerable groups, property/information/resources etc. depending on the nature of

the disclosures and pending the outcome of a full investigation. It may be that there are no suitable duties that you could undertake during this period which do not bring you into contact with children/adults. If this is the case, the manager must give consideration to suspension on full pay pending the outcome of the disciplinary investigation.

You may confirm or refute the information provided by the DBS. Where this is the case the People Services Advisor in conjunction with your line manager may pursue a range of options and this may include further checking with the DBS.

When completing [Appendix D](#): The Cause for Concern Risk Assessment Proforma it should be considered whether the conviction is relevant to the post. Evidence of previous convictions will not be used to dismiss a person for poor job performance.

Your track record will be carefully assessed and if it is satisfactory, this should be considered positively. If the disclosure results are considered to be of a serious nature and prove to be correct the manager may consider various options. Options include but are not limited to:

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

Only after a full appraisal of the situation including the risks involved and other alternative employment options investigated should dismissal be considered and then only after advice from People Services. If your manager decides to consider termination of employment, then you will be informed in writing and a hearing held in line with the Disciplinary Procedure (HR019).

If the disclosure results are considered not to be serious and do not impinge on your ability to work in your existing role then People Services will confirm this in writing within 7 calendar days of making the decision .

### **23. Once I have been checked do I have to be re-checked at any point?**

If a post requires an Enhanced DBS check or an Enhanced check for Regulated Activity the Council can legally re-check their staff as regularly as they wish to. Where there has been no cause for concern checks will routinely be carried out every three years.

The Council may require existing employees to re-apply for an up to date Enhanced DBS check or Enhanced check for Regulated Activity sooner than three years from the last check. Boston Borough Council reserves the right to ask existing members of staff in relevant positions to apply for a new DBS check if their actions or activities give “cause for concern”. The grounds for “cause for concern” could include allegations of suspicious or inappropriate behaviour made by a child or other person or a colleague, parent, carer or member of the public. In such instances, a full investigation of any such allegations will be conducted in accordance with the Council’s Disciplinary Policy (HR019). As part of the investigation process, the employee may be required to undergo an Enhanced DBS check

or Enhanced check for Regulated Activity with consideration and legal advice taken by the People Services Manager in respect of human rights and employment legislation.

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

#### **24. Tell me about Gender recognition certificates**

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

If the person is required to undergo a DBS check as a requirement for their role with Boston Borough Council they must disclose any previous names and/ or gender to the DBS who have established a special application procedure/dedicated contact officer to maintain confidentiality (email: sensitive@dbs.gsi.gov.uk or telephone: 0151 6761452).

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

#### **25. When would Boston Borough Council make a referral to the DBS?**

The Safeguarding Vulnerable Groups 2006 Act sets a legal duty for the Council to refer information to the DBS if we dismiss or remove a member of staff/volunteer from working with children and/or adults (in what is legally defined as regulated activity) because they meet the referral criteria. The Council has a duty to refer information to the DBS as both a Regulated Activity Provider and as a Local Authority. See [Appendix I](#): Referral to the DBS.

#### **26. How does the Council comply with data protection relating to DBS checks?**

The Council will ensure that sensitive personal information is held securely, and only seen by those entitled to see it in the course of their duties. An Enhanced DBS or Enhanced check for Regulated Activity and, if applicable, the cause for concern assessment (APPENDIX D: Cause for concern risk assessment pro-forma) will only be stored for as long as necessary, and then confidentially destroyed. See [Appendix G](#): Policy on the Secure Storage, Handling, Use, Retention and Disposal of Disclosures and Disclosure Information.

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

## **APPENDIX B: POSTS REQUIRING AN ENHANCED CHECK FOR REGULATED ACTIVITY**

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

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

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

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

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

### **Regulated Activity (Children) - Definition of Regulated Activity - Children**

The definition of regulated activity relating to children comprises only:

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

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

- Relevant personal care, for example washing or dressing; or health care by or supervised by a professional, even if done once;
- Registered childminding; and foster-carers;

Regulated activity still excludes:

- family arrangements; and
- personal, non-commercial arrangements.

## Definition of Supervision

Supervision must be:

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

## Specified Places

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

<b>Part 1: Regulated Activity in relation to children activities</b>	
The activities in the left-hand column are regulated activity in relation to children, subject to: <ul style="list-style-type: none"><li>• exceptions in the right-hand column;</li><li>• different provisions for “establishments” (specified places) in Part 2 below.</li></ul> Do not read the left-hand column in isolation from the right-hand column or from Part 2.	
<b>Activity</b>	<b>Exceptions – not Regulated Activity</b>
All of regulated activity.	Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity in relation to children. This is the “peer exemption”.
In para 2(1) of Schedule 4: of the Safeguarding Vulnerable Groups Act 2006:	

<p>(a) Teaching, training or instruction of children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period, or overnight*.</p> <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised.</p> <p>*Sources:</p> <ul style="list-style-type: none"> <li>- once a week: guidance, March 2010, Annex B, page 70 para B.12;</li> <li>- four or more days/ overnight: Schedule 4, para 10(1) as amended.</li> </ul>	<ul style="list-style-type: none"> <li>• Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. Para 2(3A).</li> <li>• Activity relating to a child in the course of his employment, not by a person for whom arrangements exist principally for that purpose.</li> <li>• Activity merely incidental to activity with adults.</li> </ul>
<p>(b) Care or supervision of children if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight.</p> <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised.</p>	<ul style="list-style-type: none"> <li>• Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. Para 2(3B)(b).</li> <li>• Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.</li> <li>• Activity merely incidental to activity with adults.</li> </ul>
<p>Particular types of care within (b) above, which apply to any child, even if done only once: (i) to (ii) below.</p>	

<p>(i) Relevant personal care. Para 1(1B):  (a) physical help in connection with eating or drinking, for reasons of illness or disability;  (b) physical help for reasons of age, illness, or disability, in connection with:</p> <ul style="list-style-type: none"> <li>• toileting (including re menstruation);</li> <li>• (ii-iii) washing, bathing, or dressing;</li> </ul> <p>(c)-(d) prompting with supervision, in relation to (a)-(b), where the child is otherwise unable to decide;  (e)-(f) other training or advice in relation to (a)-(b).</p>	
<p>(ii) Health care. Para 1 (1C):</p> <p>All forms of health care relating to physical or mental health including palliative care and procedures similar to medical or surgical care.</p>	<ul style="list-style-type: none"> <li>• Health care not by, or directed or supervised by, a health care professional*. Para 2(3B)(a).</li> <li>• *Defined by reference to regulatory bodies. Para 1(1C).</li> </ul>
<p>(c) Advice or guidance provided wholly or mainly for children relating to their physical, emotional or educational well-being if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight.</p>	<ul style="list-style-type: none"> <li>• Legal advice. Para 2(3C);</li> <li>• Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.</li> </ul>
<p>(a), (b) &amp; (c): Definition of “overnight”:</p> <p>In relation to teaching, training or instruction; care or supervision; or advice or guidance, it is also regulated activity if carried out (even once) at any time between 2am and 6am and with an opportunity for face-to-face contact with children. Schedule4, Para 10(2).</p>	
<p>Former category (d), treatment or therapy, is now replaced by “health care” provisions.</p>	

<p>(e) Moderating a public electronic interactive communication service likely to be used wholly or mainly by children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period.</p>	<ul style="list-style-type: none"> <li>Activity by a person who does not have access to the content of the matter, or contact with users.</li> </ul>
<p>(f) Driving a vehicle being used only for conveying children and carers or supervisors under arrangements as prescribed*, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period.</p> <p>*Prescribed by SI 2009-1548</p>	
<p>In para 1 of schedule 4:</p>	
<p>(3) Early years or later years childminding* with a requirement to register, or voluntary registration, under Childcare Act 2006.</p> <p>*That is: on domestic premises, for reward; as opposed to “childcare premises”, part 2 below.</p>	
<p>(5) Fostering** a child.</p> <p>**Defined at section 53.</p>	<ul style="list-style-type: none"> <li>Care arranged by family members and not for reward is not regulated activity. Section 53(8).</li> <li>Local Authority can foster child with barred person who is, or lives with, a relative of the child. SI 2009-1797, Art 3(2).</li> </ul>
<ul style="list-style-type: none"> <li>(14) Day to day management on a regular basis of a person providing a regulated activity in Schedule 4, paragraphs 1(1) or (2) – that is, activity:</li> </ul> <p>at (a) to (f) above; or in establishments in part 2 below;</p>	

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

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

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

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

Establishment	Exceptions – not Regulated Activity
Schedule 4, para 3(1) of the Safeguarding Vulnerable Groups Act 2006:	
<p>(a) schools (all or mainly full-time, for children);</p> <p>(aa) pupil referral units (also known as Short Stay Schools) not falling within the above;</p> <p>(b) nursery schools;</p> <p>(d) institutions for the detention of children;</p> <p>(e) &amp; (f) children’s homes;</p> <p>(fa) children’s centres in England;</p> <p>(g) childcare premises (including nurseries).</p> <p>Day to day management or supervision on a regular basis of a volunteer activity which would be regulated if unsupervised. <i>Para 1(15).</i></p>	<ul style="list-style-type: none"> <li>• Activity by person contracted (or volunteering) to provide occasional or temporary services (not teaching, training or supervision of children). <i>Para 1(2A) &amp; (2B)(a);</i></li> <li>• Volunteering, under day to day supervision of another person engaging in regulated activity. <i>Para 1 (2B)(b).</i></li> <li>• Activity by a person in a group assisting or acting on behalf of, or under direction of another person engaging in regulated activity;</li> <li>• childcare premises which are the home of a parent etc. of at least one child to whom the childcare or child minding is provided;</li> <li>• for activity undertaken regularly in a number of different establishments, but only infrequently in each: each establishment is only arranging the activity infrequently, so each establishment is not a regulated activity provider in relation to that activity.</li> </ul>

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

## **Regulated Activity (Adults)**

This provides information on the scope of regulated activity in relation to adults, as defined in the Safeguarding Vulnerable Groups Act 2006 (SVGA) and as amended by the Protection of Freedoms Act 2012 (PoFA)<sup>1</sup> in England and Wales.

The definition of regulated activity for adults will identify the activities provided to any adult which, if any adult requires them, will mean that the adult will be considered vulnerable at that particular time..

This means, for example, anyone providing personal care to an adult is in regulated activity irrespective of whether that occurs in, say, a hospital, a care home, a day care centre, a prison or in sheltered housing.

### **General points**

1. Regulated activity continues to exclude any activity carried out in the course of family relationships, and personal, non-commercial relationships.
  - a. Family relationships involve close family (e.g. parents, siblings, grandparents) and relationships between two people who live in the same household and treat each other as family.
  - b. Personal, non-commercial relationships are arrangements where either no money changes hands, or any money that does change hands is not part of a commercial relationship (for example, gifting a friend money for petrol after they have driven you to the hospital), and the arrangement is made between friends or family friends.
2. An adult is a person aged 18 years or over.
3. A person whose role includes the day to day management or supervision of any person who is engaging in regulated activity, is also in regulated activity.

### **New definition of regulated activity Adults**

There are six categories within the definition of regulated activity.

#### **1. Providing Healthcare**

The provision of health care by any health care professional to an adult, or the provision of health care to an adult under the direction or supervision of a health care professional, is regulated activity. A health care professional is a person who is regulated by one of the following professional regulators:

- General Medical Council
- General Dental Council
- General Optical Council
- General Osteopathic Council

- General Chiropractic Council
- General Pharmaceutical Council
- Pharmaceutical Society of Northern Ireland
- Nursing and Midwifery Council
- Health Professions Council

Health care includes all forms of health care provided for adults, whether relating to physical or mental health, and includes palliative care. This includes diagnostic tests and investigative procedures. Health care also includes procedures that are similar to forms of medical or surgical care that are not provided in connection with a medical condition. An example of this is taking blood from a blood donor or cosmetic surgery.

- The provision of psychotherapy and counselling to an adult which is related to health care the adult is receiving from, or under the direction or supervision of, a health care professional, is regulated activity. This would include the provision of psychotherapy and counselling over the telephone. Life coaching is excluded. The secondary legislation that will bring psychotherapy and counselling into regulated activity is soon to be laid before Parliament (as of September 2012).
- First aid, when any person administering the first aid is doing so on behalf of an organisation established for the purpose of providing first aid (for example, St John Ambulance Service), is regulated activity. This includes first aid given by Community First Responders.
- A worker employed for another purpose who volunteers, or is designated, to be that organisation's first aider is not in regulated activity. For example, a person who works in a department store whose role includes being a first aider is not engaging in regulated activity.
- Members of peer support groups (for example, Alcoholics Anonymous), are not in regulated activity, even if the group is directed or supervised by a health care professional.
- All staff who work in community pharmacies and opticians who are not regulated health care professionals will be excluded from regulated activity. For example, a person who works in a high street pharmacy providing health advice to customers over the pharmacy counter will not be in regulated activity.
- Staff in GP surgeries or dental practices who do not provide health care (for example, receptionists) will not be in regulated activity.

## 2. Providing Personal Care

- Anyone who provides an adult with 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 the adult's age, illness or disability, is in regulated activity.
- Anyone who 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 and supervision, is in regulated activity.

- Anyone who trains, instructs or provides 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, is in regulated activity.
- There is one exception to this. Excluded from regulated activity is any physical assistance provided to an adult in relation to the care of their hair when that assistance relates only to the cutting of the adult's hair. This is to ensure that hairdressers who cut the hair of patients and residents in hospitals and care homes are not engaging in regulated activity.

Illustrative examples:

- A care assistant in a care home who cuts and files an adult's nails to keep the nails short and safe, because the adult cannot do it themselves, because, for example, they cannot see well enough, would be engaging in regulated activity.
- A beauty therapist who attends a day care centre once a week and provides manicures for anyone who would like one, instead of for people who need them because of their age, illness or disability, is not engaging in regulated activity.
- A volunteer who prepares and serves a meal to an adult in their own home (but does not feed the adult) is not engaging in regulated activity. To be engaged in regulated activity you must provide physical assistance to the person, for example spoon feeding that person, or you must be prompting and supervising (for example, prompting and supervising a person with dementia, because without it they would not eat), or you must be training or instructing (for example, teaching a person who has suffered a stroke to eat using adapted cutlery).
- A health care assistant on a hospital ward who feeds an adult because they are too frail to feed themselves would be engaging in regulated activity.
- A worker in a care home who reminds a person with dementia to eat their lunch, and ensures they do so is in regulated activity.

### 3. Providing Social Work

The activities of regulated social workers in relation to adults who are clients or potential clients are a regulated activity. These activities include assessing or reviewing the need for health or social care services, and providing ongoing support to clients.

### 4. Assistance with general household matters

Anyone who provides day to day assistance to an adult because of their age, illness or disability, where that assistance includes at least one of the following, is in regulated activity:

- managing the person's cash,

- paying the person's bills, or
- shopping on their behalf.

Illustrative examples:

- A volunteer who collects shopping lists and the cash to pay for the shopping from older adults' homes, who then does the shopping on their behalf, would be engaging in regulated activity.
- A befriender who helps a disabled person compile their weekly shopping list is not in regulated activity.

#### 5. Assistance in the conduct of a person's own affairs

Anyone who provides assistance in the conduct of an adult's own affairs by virtue of:

- Lasting power of attorney under the Mental Capacity Act 2005.
- Enduring power of attorney under the Mental Capacity Act 2005.
- Being appointed as the adult's deputy under the Mental Capacity Act 2005.
- Being an Independent Mental Health Advocate.
- Being an Independent Mental Capacity Advocate.
- Providing independent advocacy services under the National Health Service Act 2006 or National Health Service (Wales) Act 2006.
- Receiving payments on behalf of that person under the Social Security Administration Act 1992 is in regulated activity.

#### 6. Conveying

The secondary legislation that will prescribe when conveying is regulated activity is soon to be laid before Parliament (as of September 2012).

- Any drivers and any assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving, health care, relevant personal care or relevant social work, are in regulated activity. The driver does, or the person assists in, such conveying for the purpose of enabling the adult to receive services. Health care, relevant personal care and relevant social work are discussed above.
- In addition, hospital porters, Patient Transport Service drivers and assistants, Ambulance Technicians and Emergency Care Assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving, health care, relevant personal care or relevant social work, are also in regulated activity.
- Conveying does not include licensed taxi drivers or licensed private hire drivers, and does not include trips taken for purposes other than to receive health care, personal care or social work (for example, trips for pleasure are excluded).

Illustrative examples:

- A person who volunteers to take an adult to and from their GP appointment on behalf of a community group is in regulated activity. It would not matter if that person knows, or is friends with, the adult they were taking to the appointment if the conveying is on behalf of the group.
- A friend who takes their neighbour to a hospital appointment would not be in regulated activity, as this is a personal relationship.

