

DBS Checks Protocol for Elected Members

Introduction

Section 27 of the Localism Act 2011 requires local authorities to promote and maintain high standards of conduct by members and co-opted members of the authority. There is no statutory requirement for councillors to undergo basic DBS checks.

There are 4 levels of DBS checks:

1. Basic Check

A Basic DBS Check is for any purpose, including employment.

A basic check will contain details of convictions and conditional cautions considered to be 'unspent' under the terms of the Rehabilitation of Offenders Act 1974.

The Rehabilitation of Offenders Act 1974 aims to give those with convictions or cautions the chance - in certain circumstances - to wipe the slate clean and start afresh.

Under the Act, eligible convictions or cautions become 'spent' after a specified period of time known as the 'rehabilitation period', the length of which varies depending on how the individual was dealt with.

2. Standard Check

A Standard DBS check is suitable for certain roles, such as a security guard. The certificate will contain details of both spent and unspent convictions, cautions, reprimands and warnings that are held on the Police National Computer, which are not subject to filtering.

An individual cannot apply for a standard check by themselves. There must be a recruiting organisation who needs the applicant to get the check. This is then sent to DBS through a Registered Body.

3. Enhanced Check

An Enhanced DBS check is suitable for people working with children or adults in certain circumstances such as those in receipt of healthcare or personal care. An Enhanced DBS check is also suitable for a small number of other roles such as taxi licence applications or people working in the Gambling Commission.

The certificate will contain the same details as a standard certificate and, if the role is eligible, an employer can request that one or both of the DBS Barred Lists are checked.

The certificate may also contain non-conviction information supplied by relevant police forces, if it is deemed relevant and ought to be contained in the certificate.

An individual cannot apply for an Enhanced DBS check by themselves. There must be a recruiting organisation who needs the applicant to get the check. This is then sent to DBS through a Registered Body.

4. Enhanced with Barred List(s) Check

An Enhanced with Barred Lists DBS check is also suitable for people working with children or adults in certain circumstances such as those in receipt of healthcare or personal care.

An Enhanced with Barred Lists certificate will contain the same information as an Enhanced DBS certificate, but will also include a check of one or both Barred Lists.

Eligibility for Standard, Enhanced, and Enhanced with Barred Lists DBS checks is prescribed in legislation and can only be requested where the requester is legally allowed to do so. They can only be applied for by a 'Registered Body' such as an employer.

Basic Checks

Following member consultation, it has been agreed that all members shall undergo basic DBS checks.

Each member is responsible for making the application and must do so within 3 months of being elected and thereafter every 12 months whilst they remain an Elected Member.

DBS requires Elected Members to submit the DBS application personally. However, officers from the Council's Law and Governance Directorate will support and co-ordinate the application and processing of Basic DBS checks with Elected Members.

Members must produce an original or certified copy of the DBS check to Vanessa Maher-Smith in Law & Governance (vanessa_mahersmith@sandwell.gov.uk). A record will be kept of Members who have complied with this requirement. Copies of the DBS check will not be kept by the Council.

Enhanced DBS Checks

There are certain roles an Elected Member may take on in addition to their role as a ward Councillor. Some of those roles involve more regular and frequent contact with vulnerable adults and children. Whilst there is no statutory requirement for DBS checks in relation to these roles, they may meet the eligibility criteria for an Enhanced DBS check. To determine whether an Enhanced DBS check is required, the Council follows the Government's DBS Eligibility Guidance, which can be found via the following link:

<https://www.gov.uk/government/collections/dbs-eligibility-guidance>

The eligibility criteria for an Enhanced DBS check is dependent upon whether the Elected Member will be working with adults or children, how frequent that interaction is and whether it is unsupervised or with no other person present.

Working with Adults

Under the Police Act 1997 (Criminal Records) Regulations 2002, a person is eligible for an Enhanced DBS check if they are:

- (i) a member of a local authority and discharges any social services functions of a local authority which relate wholly or mainly to adults who receive a health or social care service
- (ii) a member of an executive of a local authority which discharges any such functions;
- (iii) a member of a committee of an executive of a local authority which discharges any such functions; or
- (iv) a member of an area committee, or any other committee, of a local authority which discharges any such functions.

Working with Children

Under the Police Act 1997 (Criminal Records) Regulations 2002, a person is eligible for an Enhanced DBS check if the organisation is:

- i) considering the applicant's suitability to engage in any activity which is a regulated activity relating to children

Regulated activity is made up of:

- i) what activity a person carries out and how often the person does it, for example

Activity	Period condition	Supervision	Age of child
Teaching, training or instruction, care or supervision of children	More than 3 days in a 30 day period OR overnight between 2am & 6am with the opportunity for face to face contact with children	Must be considered	Under 18 – but not if the activity is in relation to the child's paid or unpaid employment AND they are 16/17.
Moderating a web service wholly or mainly for children	More than 3 days in a 30 day period ONLY	Not required	Under 18
Advice or guidance wholly or mainly to children	More than 3 days in a 30 day period OR overnight between 2am & 6am with the opportunity for face to face contact with children	Not required	Under 18 – but not if the activity is in relation to the child's paid or unpaid employment AND they are 16/17.
Driving a vehicle for children	More than 3 days in a 30 day period ONLY	Not required	Under 18
Health care or personal care	Once is enough	Not required	Under 18
Registering to be a foster carer or private foster carer	None	Not required	Under 18
Registering to be a childminder or child care provider, including voluntary registration	None	Not required	In line with regulations

or

- ii) where the role takes place and how often the person will work there

The specified establishments are:

- An educational institution exclusively or mainly for the provision or full-time education of children
- A pupil referral unit
- A provider of nursery education
- A detention centre for children
- A children's home or a home provided under the Children Act 1989
- A children's centre
- Relevant childcare premises

Ancillary roles in these specified establishments must meet all four of the following criteria to be in regulated activity with children:

- They work there on more than 3 days in a 30 day period or overnight between 2am and 6am with the opportunity for face to face contact with the children and
- They have the opportunity, because of their job, to have contact with the children in the establishment and
- They work there for the purpose of the establishment and
- It is not temporary or occasional work, and
- It is not a supervised volunteer role

The following members will be asked to consent to Enhanced DBS checks, subject to them meeting the DBS eligibility criteria/guidance:

- The Leader,
- Deputy Leader,
- Cabinet Members for Children and Adults
- All Members of Children's Services and Education Scrutiny Board and Health and Adults Social Care Scrutiny Board
- Members of the Corporate Parenting Board
- Members of the Health and Wellbeing Board, and
- Any other Member who may regularly come into contact with children or vulnerable adults as part of their Council role.

Costs

A Basic DBS check is currently £18 each.

Enhanced DBS checks currently cost £38 each.

The cost of the DBS check is to be met by the Council.

Frequency of Check

Members will be expected to complete the application for a Basic DBS online within 3 months of being elected, and every 12 months thereafter. The application can be completed on the following website:

<https://www.gov.uk/request-copy-criminal-record>

Guidance is available here:

<https://www.gov.uk/government/collections/dbs-checking-service-guidance--2>

The Enhanced DBS request will be completed within 14 days of appointment to the relevant position/committee and every 12 months from the date of appointment, until the appointment ceases.

Failure to comply

If Members fail to meet the requirements to complete a DBS check and produce it to the Council, this will be reported to:

- i) The Ethical Standards and Member Development Committee;
- ii) The Group Leader; and
- iii) Full Council (if required)

In the event that a Member fails to comply with the requirement to undergo an Enhanced check, they will be unable to undertake that role.

What Happens if a Check Reveals an Offence?

In the case of a DBS check revealing an offence, the relevant Elected Member shall within 3 working days refer the DBS check to the Monitoring Officer.

The Monitoring Officer, will in consultation with the Chair of the Ethical Standards and Member Development Committee, consider the results of the DBS check and determine whether the matter should be referred to the Group Leader of the relevant Elected Member and/or the Ethical Standards and Member Development Committee for consideration.

The Monitoring Officer and Chair of the Ethical Standards and Member Development Committee shall consider, inter alia,

- (i) the significance and/or severity of the offence,
- (ii) the amount of time that has elapsed since the date of the conviction,
- (iii) whether public confidence in the position held by Elected Member in question could be adversely affected, and if so, to what extent,
- (iv) The potential reputational harm (if any) that could impact upon the Council
- (v) whether the matter should be referred to the Ethical Standards and Member Development Committee for consideration.

It is recognised that the data will include personal data and criminal offence data and the Council will ensure compliance with UK GDPR and Data Protection legislation when processing the information, including the application of Schedule 12A Local Government Act 1972 (as amended).

Other actions- assurance from Political Parties

It is recognised that a DBS check is only valid on the day that it is provided, and circumstance may change at any time. The Council will work with the Political Groups to ensure Elected Members understand that they have an obligation to declare any criminal offences/convictions (other than minor offences such as traffic offences) to the Monitoring Officer as soon as reasonable practicable after conviction (i.e. within 3 working days).

Retention of Information

The Council will maintain a record of Members who have produced their basic DBS checks to the Officer appointed by the Monitoring Officer. This will be retained for a period of 15 months after the date of the last entry.

Enhanced DBS checks will be provided to the Council as the Registered Body. They will be kept for 1 month after receipt of the updated check.

Should a Councillor cease to be a Councillor during the 12 month period, their Enhanced DBS check will be destroyed after 1 month.