

Regulated Activity – Extract taken from Keeping Children Safe in Education – September 2016 guidance (Page 22-24)

86. It is vital that schools and colleges create a culture of safe recruitment and, as part of that, adopt recruitment procedures that help deter, reject or identify people who might abuse children, (see paragraphs 71-72 about safer recruitment). This part of the guidance describes in detail those checks that are, or may be, required for any individual working in any capacity at, or visiting, the school or college. Governing bodies and proprietors must act reasonably in making decisions about the suitability of the prospective employee based on checks and evidence including criminal record checks (DBS checks), barred list checks and prohibition checks together with references and interview information. 25, 26

87. The level of DBS certificate required, and whether a prohibition check is required, will depend on the role and duties of an applicant to work in a school or college, as outlined in this guidance.

88. For most appointments, an enhanced DBS certificate, which includes barred list information, will be required as the majority of staff will be engaging in regulated activity. In summary, a person will be considered to be engaging in regulated activity if, as a result of their work, they:

- will be responsible, on a regular basis in a school or college, for teaching, training instructing, caring for or supervising children; or
- will carry out paid, or unsupervised unpaid, work regularly in a school or college where that work provides an opportunity for contact with children;²⁷ or
- engage in intimate or personal care or overnight activity, even if this happens only once.

A more detailed description of regulated activity is provided at page 24.

89. For all other staff who have an opportunity for regular contact with children who are not engaging in regulated activity, an enhanced DBS certificate, which does not include a barred list check, will be appropriate. This would include contractors (see paragraphs 134-137 for further information on contractors) who would have the opportunity for contact with children and who work under a temporary or occasional contract.²⁸

90. In a school or college, a **supervised** volunteer who regularly teaches or looks after children is not in regulated activity.²⁹ The department has published separate statutory guidance on supervision and regulated activity which schools and colleges should have regard to when considering which checks should be undertaken on volunteers. This is set out at Annex F.

91. In addition to obtaining the DBS certificate described, anyone who is appointed to carry out teaching work will require an additional check to ensure they are not prohibited from teaching.³⁰ For those engaged in management roles (in independent schools - including academies and free schools) an additional check is required to ensure they are not prohibited under section 128 provisions.³¹ See the pre-appointments section of this guidance.

²⁵ Regulations 12 and 24 of the School Staffing (England) Regulations 2009 for maintained schools, apply also to the management committee of pupil referral units through the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007. Part 4 of the Schedule to the Education (Independent School Standards) (England) Regulations 2014, applies to independent schools, including free schools and academies. Regulation 3 and paragraphs 4, 5 and 6 of Part 1 and paragraphs 15, 16 and 17 of Part 2 of the Schedule to the Non-Maintained Special Schools (England) Regulations 2015 apply to non-maintained special schools. Regulation 5 of the Further Education (Providers of Education) (England) Regulations 2006 apply to further education colleges.

²⁶ The Teachers' Disciplinary (England) Regulations 2012 apply to schools and sixth form colleges and any person that is subject to a prohibition order is prohibited from carrying out teaching work in those establishments. There is no duty for further education colleges (other than sixth form colleges) to conduct this additional prohibition check.

²⁷ Applies to any college that provides, exclusively or mainly, full-time education to children, i.e. persons under the age of 18.

²⁸ Temporary or occasional is not further defined by legislation. Employers should apply the ordinary meaning of these terms, i.e. occasional - 'a particular occasion or on an irregular basis'; temporary services - 'lasting only for a limited period, not permanent'.

²⁹ 'Supervised' and 'unsupervised' have a particular meaning in relation to regulated activity.

³⁰ The Teachers' Disciplinary (England) Regulations 2012 apply to schools and sixth form colleges and any person that is subject to a prohibition order is prohibited from carrying out teaching work in those establishments. Further education

colleges (other than sixth form colleges) are not legally required to conduct this additional prohibition check. The School Staffing (England) Regulations 2009, the Non-Maintained Special Schools (England) Regulations 2015 and the Education (Independent School Standards) Regulations 2014 require governing bodies or proprietors to check that a person to be appointed is not subject to an interim prohibition order or a prohibition order.

³¹ Section 128 of the Education and Skills Act 2008 provides for the Secretary of State to direct that a person may be prohibited or restricted from participating in the management of an independent school (which includes academies and free schools).

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. HM Government has produced a Factual note on regulated activity in relation to children: scope

Regulated activity includes:

- a) teaching, training, instructing, caring for (see (c) below) or supervising children if the person is unsupervised, or providing advice or guidance on well-being, or driving a vehicle only for children,
- b) work for a limited range of establishments (known as 'specified places', which include schools and colleges), with the opportunity for contact with children, but not including work done by supervised volunteers;

Work under (a) or (b) is regulated activity only if done regularly.³² Some activities are always regulated activities, regardless of their frequency or whether they are supervised or not. This includes:

c) relevant personal care, or health care provided by or provided under the supervision of a health care professional:

- personal care includes helping a child, for reasons of age, illness or disability, with eating or drinking, or in connection with toileting, washing, bathing and dressing;³³
- health care means care for children provided by, or under the direction or supervision of, a regulated health care professional.

³² The Safeguarding Vulnerable Groups Act 2006 provides that the type of work referred to at (a) or (b) will be regulated activity if "it is carried out frequently by the same person" or if "the period condition is satisfied". Paragraph 10 of Schedule 4 to this Act says the period condition is satisfied if the person carrying out the activity does so at any time on more than three days in any period of 30 days and, for the purposes of the work referred to at (a), apart from driving a vehicle only for children, it is also satisfied if it is done at any time between 2am and 6am and it gives the person the opportunity to have face to face contact with children.

³³ It is not intended that personal care includes such activities as, for example, parent volunteers helping with costumes for school plays or helping a child lace up football boots.