

15 February 2024

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Environment Overview and Scrutiny committee

Item 7

Animal Welfare Policy

DBS CHECKS

There appeared to be some confusion during the committee meeting regarding Disclosure and Barring Service (DBS) checks.

It is illegal for an employer or any other body (which includes a local authority) to undertake a DBS check on an individual unless the law REQUIRES that person to undertake such a check. A DBS check cannot be carried out “just in case” or because the person carrying out the check thinks it might be a good idea.

The law regarding Vulnerable Groups is set out in the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012.

Schedule 4 sets out the circumstances in which a DBS check is required.

Schedule 4 Part 1 sets out the requirements related to children and Part 2 sets out the requirements related to vulnerable adults.

The principal activity in relation to children which is a regulated activity and is likely to be relevant to Animal Welfare Licensing is:

(a) any form of teaching, training or instruction of children, unless the teaching, training or instruction is merely incidental to teaching, training or instruction of persons who are not children;

There does not seem to be any similar provision in Part 2 relating to vulnerable adults which would require a DBS check in respect of one of the Animal Welfare activities subject to this licensing policy.

LEVEL OF DBS CHECK

The four levels of DBS check are:

- Basic DBS check
- Standard DBS check
- Enhanced DBS check
- Enhanced with Barred List(s) DBS check

Basic DBS check

A Basic DBS check is for any purpose, including employment. The certificate will contain details of convictions and conditional cautions that are considered to be unspent under the terms of the Rehabilitation of Offenders Act (ROA) 1974.

Standard DBS 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.

Enhanced DBS 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.

Enhanced with Barred Lists DBS 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

Eligibility for Standard, Enhanced, and Enhanced with Barred Lists DBS checks is prescribed in legislation. Recruiters should only request a DBS check on an individual when they are legally allowed to do so – they must be entitled by law to ask an individual to reveal their full criminal history. This is known as asking ‘an exempted question.’

An exempted question applies when the individual will be working in specific occupations, for certain licences and specified positions. These are covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

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References

Statutes

Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 Original version only available at <https://www.legislation.gov.uk/uksi/1975/1023/contents/made>

(Amended several times but no consolidated current version appears to be available)

The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2023 Available at <https://www.legislation.gov.uk/uksi/2023/767/article/2/made>

[S.I. 1975/1023](#). Relevant amending instruments are [S.I.2006/2143](#), [2009/1818](#), [2012/3006](#) and [2014/1707](#).

Other documents

About Us Disclosure and Barring Service gov.uk Available at <https://www.gov.uk/government/organisations/disclosure-and-barring-service/about#eligibility>

Prepared by the Policy Lead for Disclosure and Barring Services *Regulated activity (adults) (2012)* Department of Health Available at <https://assets.publishing.service.gov.uk/media/5a7cba32ed915d63cc65c7ce/Regulated-Activity-Adults-Dec-2012.pdf>

Regulated activity with children (undated) Disclosure and Barring Service Available at https://assets.publishing.service.gov.uk/media/5b92b7f7e5274a424a8ef20b/Regulated_Activity_with_Children_in_England.pdf

Cases