

## Disclosure and Barring Service – Position as at June 13

The following bullet points are a précis of where we are so far with changes to the previous CRB and independent Safeguarding Authority (ISA) system.

- **DBS** - ISA and CRB merged to form the Disclosure and Barring Service (DBS) in December 2012 – Implications: ensure job adverts refer to 'an enhanced DBS check' (not CRB).
- **Portability** – what was previously being called portability is actually an update service. The update service costs £13 per person per year and the DBS takes payments from individuals' bank accounts. There are no current plans for employers to be able to pay 'in bulk'. It is not clear whether employers can insist an employee registers for the update service. It may be that employers must reimburse their employee for the £10 annual fee. The update service is available for new and existing staff and could be useful for those with more than one role working with children and/or vulnerable adults. It is only available once the new Disclosure Certificate has been sent. Despite the fact that those already registered with the update service will be able to start in post earlier because they will not have to wait for a new DBS Check, it would be unlawful discrimination to offer posts only to those who are already registered with the update service. Example 1 below helps explain the new system.
- **The definition of a Regulated Activity** for those working with children has changed from September 2012. All those working in a Regulated Activity should have a DBS check and it is illegal for anyone barred from working with children to apply for work that brings them into a Regulated Activity.

### **Regulated Activity – Children**

Unsupervised activity: teach, train, instruct, care for or supervise children or provide advice/guidance on wellbeing

Drive vehicle only for children

Work for 'specified places' e.g. Schools, children's homes, childcare premises (not for supervised volunteers)

Above to be 'regular' = once per week or more, 4 or more days in 30 or overnight.

Relevant personal care e.g. Washing or dressing, or health care supervision even if only once.

Registered child minding or foster caring.

- **Barred Individuals:** A major change is that those who are barred from working with children and NOT barred from working in position which does not fall into the Regulated Activity definition above. This means someone barred from working with children could legally work as a supervised volunteer and would not need a DBS check because supervised activity does not fall into the Regulated Activity Definition.

- It will remain an offence to knowingly employ someone who is barred or for a barred person to apply to work in a regulated activity.
- **Single Certificates:** from 17<sup>th</sup> June 2013, only the individual themselves will receive a copy of the DBS disclosure. Previously it also went to the Registered Body requesting the check in addition to the individual. This means that the individual will need to bring their disclosure to show their employer.

Implications:

- As the employer (rather than the Registered Body) might now see an individual's criminal history, employers will need to have in place a Rehabilitation of Offenders Policy which outlines the legal duty not to discriminate against someone on the grounds of criminal convictions that have no relevance to the post they will be employed in.
- Employers will need to discuss any new arrangements for risk assessments with their Registered Body. For those who use Gloucestershire County Council (GCC) as their Registered Body, employers should ask permission from the individual for their DBS to be shared with the existing GCC DBS Panel to undertake the risk assessment. Previously this Panel already received the second copy of the DBS Disclosure.
- Recruitment policies will need to be amended to specify what action to take if a 'preferred candidate' fails to bring their DBS certificate to an employer within a reasonable time.
- If starting an employee in a Regulated Activity prior to receiving the DBS disclosure, there is a legal requirement to check the barring list before they commence work. Volunteers cannot usually be checked against the barred list but a DBS disclosure can be sought for them if they are unsupervised.

Example 1:

Mrs A applies for a new DBS check through her employer. She will receive the only copy of the disclosure and will need to show this to her employer. The registered body will no longer receive a copy of the disclosure. Mrs A will need to produce the disclosure certificate within 28 days. If she doesn't, the employer can ask the registered body to check with the DBS that the disclosure has been sent to Mrs A. If the disclosure contained no information (was clear) the DBS will confirm that a clear disclosure has been sent to the employee. Mrs A may have disagreed with the information on her disclosure and if so, she can appeal to the DBS. The employer (who has not seen the disclosure) will not be advised that criminal information had been disclosed or that Mrs A has appeals.

Before the first anniversary of the disclosure, Mrs A will be asked by the DBS whether she wants to sign up to the update service. If so, she will provide her bank details and pay £10 per year for this. If Mrs A's employer then wants to check her status on line, they can do so (with Mrs A's permission). This will show the employer that either there have been no changes since her disclosure was issued (i.e. she has not received a caution or a conviction), or there is new information and the employer should undertake a new DBS disclosure. An on line check will also advise whether Mrs A has withdrawn from the service or there is an error in data.

If Mrs A also volunteers with children elsewhere, she can show them her DBS certificate and give them her details so that they can do a check on line. As long as there are no changes to her details when they run the on line check, they can clear her immediately.

Please remember though that there is no current contractual requirement for individuals to pay to register for the update service and lack of registration cannot be used as a reason for not employing.

For further information and to register for DBS updates go to the DBS website at:  
<https://www.gov.uk/government/organisations/disclosure-and-barring-service/about>

Jane Bee – 02.08.2013