

## The Whitby Secondary Partnership

# DBS Policy and Guidance

### Governance Status

This policy is a NYCC policy and was adopted by the Governing Body.

It will be reviewed annually.

Review dates	By Whom	Approval date
January 2023	Staff and Governors	21 March 2023
February 2024		

Signed by Chair of Governors: S Crossland



C Zanelli



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### 1. Introduction

**1.1** All staff, volunteers and other contracted workers in schoolwork with children and other vulnerable members of society. The law requires that appropriate checks are carried out to ensure that people who pose a threat to children or staff are not given positions of trust where they could exploit children or vulnerable groups entrusted to their care.

**1.2** This document outlines the school's policy and should be read in conjunction with the associated guidance [which may, at times go beyond the statutory minimum requirements]. This policy's approach reflects part of the school's ongoing commitment to safeguarding children, which includes, but is not limited to, ensuring that people who work with vulnerable groups are suitable.

**1.3** School has a legal duty to not knowingly employ a barred person in 'Regulated Activity' either in a paid or voluntary capacity. This includes contractors providing services to school, which involve working in regulated activity.

**1.4** This policy and associated guidance should be read in conjunction with the Recruitment and Selection Policy and Procedure, in particular Section 6 and Appendix 3 of that policy.

### 2. Key Definitions

#### 2.1 Regulated Activity – [from September 2012]

From September 2012, the definition of Regulated Activity focusses on work which involves close and unsupervised contact with vulnerable groups and children. Posts that meet the new definition are eligible for an enhanced DBS check PLUS a barred list check for the appropriate sector (children/ adults or both). Posts that do not meet the new definition, but that met the old definition can still be checked, however these posts are eligible for an enhanced check ONLY – without the barred list check, (see Appendix 7 for more detail). The new definitions of regulated activity are detailed below:

#### 2.2 Relating to children:

1. Unsupervised activities: teach, train, instruct, care for and 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') with opportunity for contact with children: for example, schools, nurseries, pupil referral units, children's centres, children's homes, childcare premises.

3. This definition does not include work by supervised volunteers. Further guidance regarding supervision is available in the Department for Education's guidance on supervision
4. Registered childminding and or foster carers.

**Note:**

Work under (1) or (2) above is regulated activity only if done 'regularly'. Please note - regularity no longer needs to take place at the same establishment and can take place at a number of different regulated establishments, (once a week or more often, or on 4 or more days in a 30-day period, or overnight).

School Governors are required to have a DBS check (without a barred list check) as detailed in the School Governance (Constitution and Federations) (England) (Amendment) Regulations 2016.

### **2.3 Regulated activity – old definition [prior to September 2012]**

Certain posts in schools do not meet the new definition of regulated activity but are still eligible for Enhanced only DBS checks under the old definition. Full details of this are available in Appendix 7.

### **2.4 Levels of check**

Enhanced DBS checks contain all spent and unspent convictions, cautions and reprimands from the Police National Computer [PNC] as well as relevant Police information held locally.

Where a DBS certificate is required, it **must** be obtained from the candidate before, or as soon as practicable after, the person's appointment, [including when using the DBS update service, if this is applicable to the school/academy].

Once the checks are complete, the DBS will send a DBS certificate to the applicant. The applicant **must show the original paper DBS certificate to their potential employer** before they take up post, or as soon as practicable afterwards. Schools/academies and colleges will be able to compare any information disclosed on the certificate with any information shared by the applicant during the recruitment process.

### **2.5 Volunteer**

The DBS definition of a volunteer is someone who spends unpaid time doing something which aims to benefit someone other than themselves. Therefore, roles such as a student undertaking work experience, or a person attending school to gain experience with children with a view to completing a teaching course, or foster carers/foster carer support and babysitters are not volunteers for DBS purposes.

### **2.6 Rehabilitation of Offenders Act**

The Rehabilitation of Offenders Act (ROA) 1974 aims to help people who have been convicted of a criminal offence and who haven't re-offended since under the Act. Custodial sentences of up to and including 4 years in length can become spent. Full details of Rehabilitation periods are available on Gov.uk here.

The Department for Education guidance Keeping Children Safe in Education September 2021 provides specific guidance for schools and colleges.

## **Policy**

### 3.1 Who should be checked?

All school positions defined as being in Regulated Activity require a DBS check and applicants must declare both spent and unspent convictions. Schools must require an individual who is over 16 to complete a DBS application and school's policy on who should be checked is:

<i>Schools</i>
<i>Enhanced DBS Check + Barred List Check to be undertaken on posts which meet the NEW definition of Regulated Activity (Sept 12)</i>
<i>Enhanced DBS Check only (no barred list) to be undertaken on posts which do not meet the NEW definition but do meet the old definition. (See appendix 7) and school governors</i>

**3.2** In order to determine whether or not a post meets the definition of Regulated Activity, school managers and Headteachers must consider the full definition which can be found above in the definitions section. Flow charts are provided in Appendix 1 but must be read in conjunction with the full definitions.

**3.3** Where a check is required, the employee must not ordinarily commence in post until the appropriate clearance has been received. However, in **exceptional** circumstances a candidate may begin work prior to receipt of all essential checks and references. Whenever a school is considering allowing a new employee to begin their role before all checks are in place, they must complete a risk assessment. NYES HR provide a model risk assessment decision sheet for this purpose. **A Barred list check MUST be done before starting any new employee.**

**3.4** Where any difficulties are encountered, further advice can be sought from NYES HR.

### 3.5 Checking volunteers

- Volunteers who are carrying out unsupervised Regulated Activity are required to undertake an enhanced DBS check + barred list check.
- Volunteers who are supervised regularly and at a reasonable level are only eligible for an enhanced DBS check which does not include a barred list check. This is because they are not deemed to be working in Regulated Activity as they are supervised.
- Governors are required to have an enhanced DBS check (without barred list check), if Governors undertake volunteering activity in addition to their Governor duties, they should be treated like any other volunteer and it may be necessary to have an enhanced DBS including barred list check.

**Important note:** School should take care as in the event that a volunteer check is requested for a situation that does not meet the definition of volunteering as defined by DBS, this may be viewed as fraudulent activity and school could face negative consequences.

### Re-checks

NYCC will administer random rechecks across all posts eligible for DBS clearance, including schools, with a limited amount of exclusions. Schools however, will have the discretion to:

- request more frequent re-checks at school level, where a risk is considered to be higher, for example in residential schools, or
- opt out of the NYCC re-check facility

Any decision to exercise the discretion to opt out will need to be made following full school Governing Body consideration. A record of the Governing Body decision and the rationale, will need to be submitted to NYES HR (NYHR@northyorks.gov.uk). In either instance, schools will be responsible for

monitoring their own rechecks as NYCC will exclude those schools from the standard random recheck process.

### 3.6 Verifying documents

Under all circumstances [unless otherwise advised] managers must verify documents on a face-to-face basis using original evidence. Only documents included on the DBS identity check guidance provided by the Home Office can be accepted.

### 3.7 Portability

a) It is NYCC policy that DBS checks are not portable (transferrable) from other employers. All staff joining school must undertake a new DBS check to ensure that they are suitable for the role prior to commencement.

b) Volunteers who take up paid employment must undertake a new DBS check, as the level of responsibility is expected to be greater than that of a volunteer, and the DBS check may include additional information.

c) Existing members of staff will be required to undertake a new check if their new role has greater access or responsibility for children or vulnerable groups than that previously held, or where they move from one sector to another and the appropriate barred list needs to be checked.

d) DBS checks are specific to the post for which they are applying / completing: different information may be disclosed depending upon the relevance to the role applied for therefore are often not transferable when moving from one school post to another school post. Always seek advice from the DBS team within Employment Service Support, who may be contacted via: EmploymentSupportService@northyorks.gov.uk

e) DBS clearances are transferable between NYCC schools only, subject to 4. NYCC will not accept a DBS clearance from a non-maintained school, unless the school had used the NYCC DBS checking service and the check was clear, less than 3 months old and for the same type and level of role.

### 3.8 Breaks in service

A new DBS check must be completed when a break in service of 3 months or more occurs. This is standard NYCC policy for all NYCC and school staff, including casual and relief staff and also any contractor working on behalf of school in regulated activity.

### 3.9 Declarations of convictions during employment with School

NYES HR publishes a Code of Conduct for schools to adopt. The NYES HR Code of Conduct advises schools on how to manage staff convictions during employment. The Code of Conduct is available on CYPIS.info.

### 3.10 Agency workers

Schools choosing to engage agency workers **must** ensure the agency has obtained the appropriate clearances. It is also essential to check the identity of the person presenting themselves for work on behalf of the Agency in order to ensure that they are the same person for whom checks have been undertaken in compliance with DFE regulations.

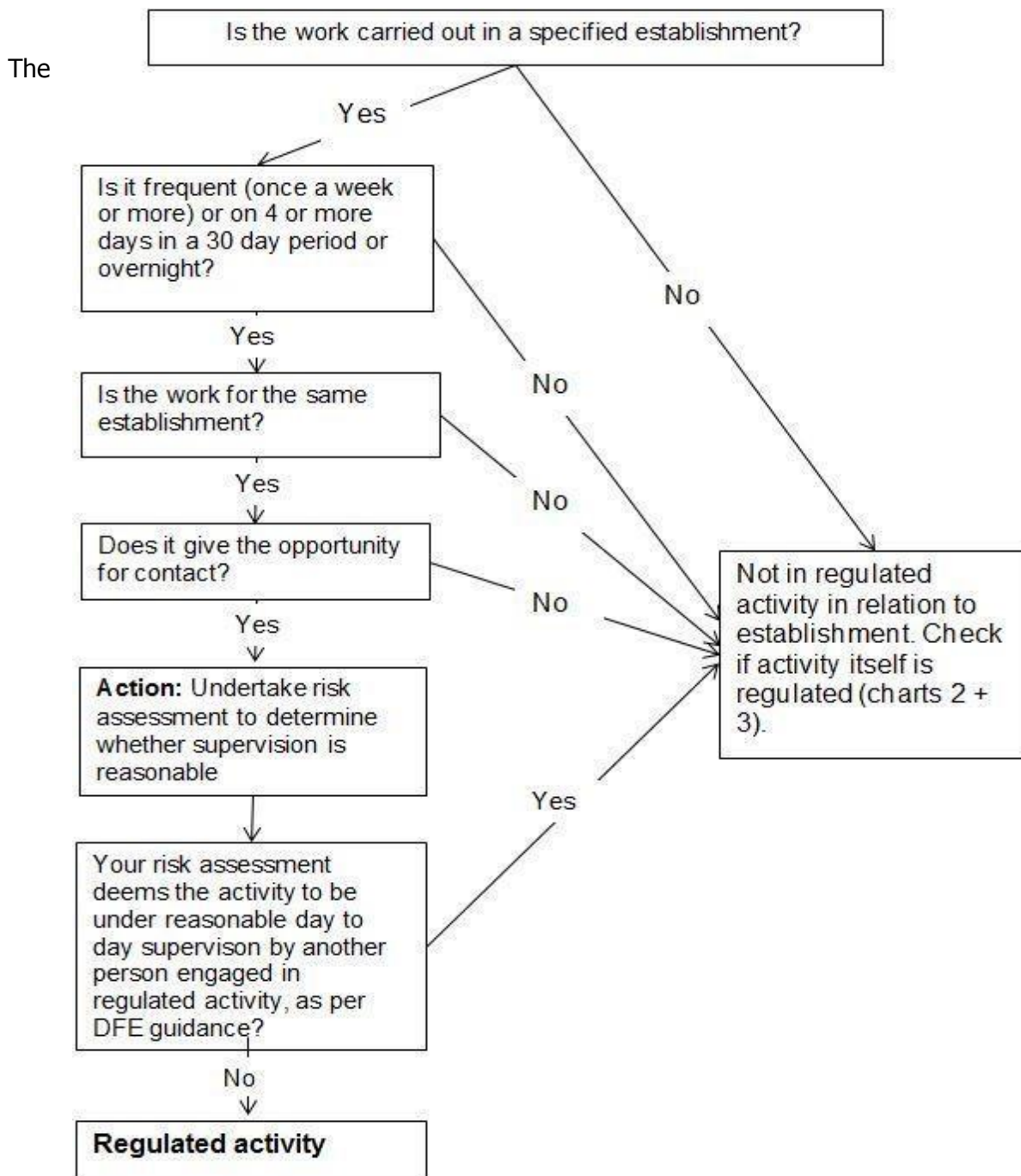
Where the Agency has obtained an Enhanced DBS, which has disclosed any matter or information, or information was provided to the agency, the school **must obtain their own** copy of the certificate from the agency.

### 3.11 Contractors

Department for Education guidance states: schools and colleges should ensure that any contractor, or any employee of the contractor, who is to work at the school or college has been subject to the

appropriate level of DBS check. Contractors engaging in Regulated Activity will require an Enhanced DBS certificate (including Barred List information). For all other contractors who are not engaging in Regulated Activity, but whose work provides them with an opportunity for **regular** contact with children, an enhanced DBS check (not including Barred List information) will be required. In considering whether the contact is regular, it is irrelevant whether the contractor works on a single site or across a number of sites.

### Appendix 1 – Flowcharts– is it Regulated Activity - children?

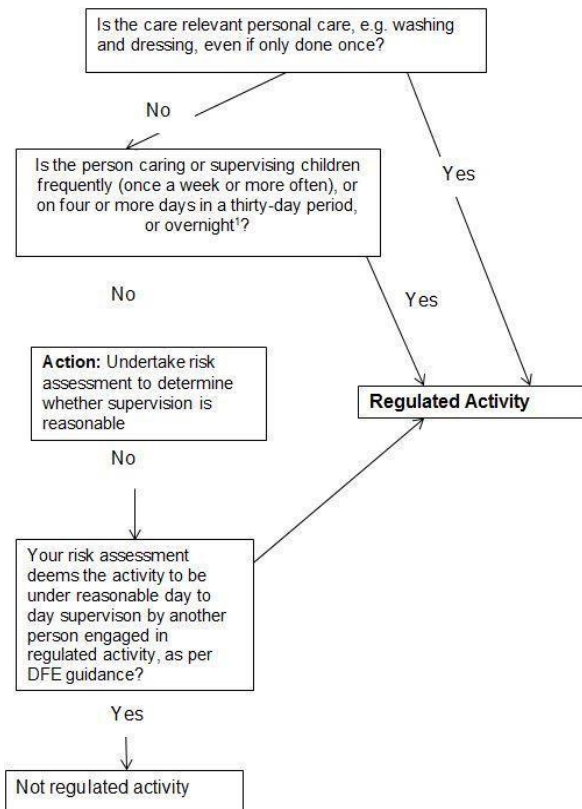
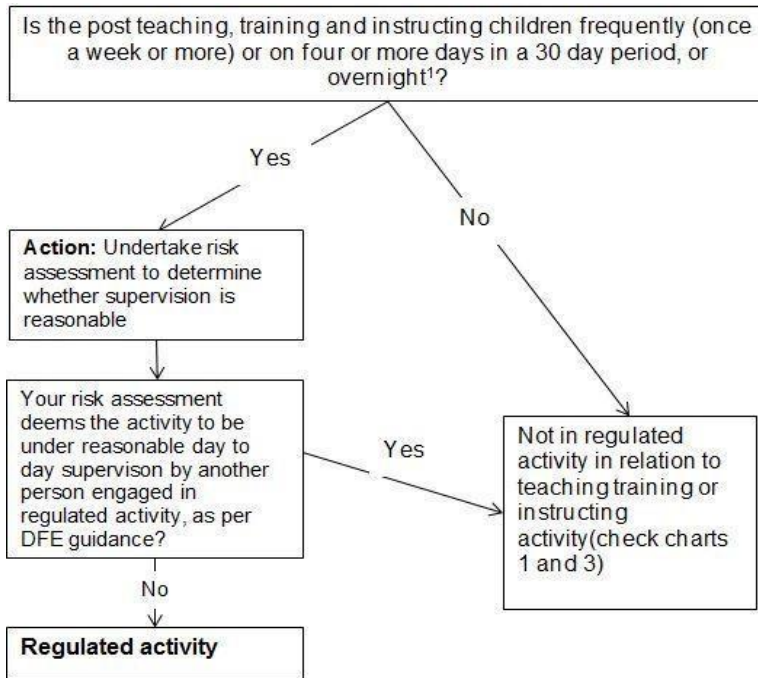


following flowcharts are provided as a visual aid to the policy and definitions of Regulated Activity for children.

#### Chart 1 – ESTABLISHMENT: is it Regulated Activity - children?

Overnight is any time between 2am and 6am with an opportunity for face-to-face contact

## Appendix 2 Chart 2 – ACTIVITY: is it Regulated Activity - children?



Overnight is any time between 2am and 6am with an opportunity for face-to-face contact with children.



## **Appendix 3 – Case studies**

The following case studies provide examples of how the flow charts in Appendices 1 and 2 above can be applied to everyday scenarios:

### School teacher

Rob has been successfully appointed to the role of Teacher of English at School. His work will always be carried out in the school premises, the specified establishment on his contract of employment. Rob will work full time and will be in contact with children when teaching. His teaching will not normally be supervised, which means Rob's role will entail regulated activity; therefore, Rob will need to complete an enhanced DBS Check + Barred list check for children before commencing in post.

### Student – Work experience

Fay is currently undertaking a teacher training course at York St John University and requires work experience as part of her training. She has approached a school in North Yorkshire to ask if they would be willing to provide support with this. School agree to allow Fay to attend school and engage with the children. They request the University to confirm that they have completed a DBS check as part of the course enrolment requirements.

Note – If the circumstances had been different and Fay had approached the school directly for work experience, and she wasn't completing any official training course; provided the school agreed, Fay would be required to pay for the DBS check herself as this is not a volunteer role.

## Appendix 4 - list of designated decision makers

Advice and guidance can always be sought from NYES HR, through HR Advisors, Caseworkers and Business Partners. For complex and difficult cases, the relevant NYES HR Principal Advisor will be the decision maker.

<b>Directorate</b>	<b>Service</b>	<b>Job title of decision maker</b>
CYPs	Schools	NYES HR Principal Advisor – in liaison with head teacher

## **Appendix 5 – DBS secure storage retention of information**

Policy Statement on the Use, Secure Storage, Retention and Disposal of Certificates and Certificate Information (Electronic DBS process)

### **General principles**

As an organisation using the Disclosure and Barring Service (DBS) to help assess the suitability of applicants for positions of trust, school complies fully with relevant Codes of Practice regarding the correct handling, use, storage, retention and disposal of DBS Certificates and DBS Certificate information. School also complies fully with its obligations under the Data Protection Act 1998 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of DBS Certificate Information and has a written policy on these matters, which is available to those who wish to see it on request.

### **Storage and access**

DBS Certificate information is never kept on an applicant's personal file and is always kept separately and securely, with access strictly controlled and limited to those who are entitled to see it as part of their duties. Electronic certificate information is held in accordance with NYES HR advice and guidance to do with the Single Central Record [SCR] for school, a system accessible only to those authorised to view it in the course of their duties.

### **Handling**

In accordance with S.124 of the Police Act 1997, Certificate Information is only passed to those who are authorised to receive it in the course of their duties. School maintains a record of all those to whom DBS Certificates or DBS Certificate information has been revealed and we recognise that it is a criminal offence to pass this information to anyone who is not entitled to receive it.

### **Usage**

DBS Certificate information is only used for the specific purpose for which it was requested and for which the applicant's full consent has been given.

### **Retention**

Once a recruitment (or other relevant) decision has been made, school do not keep DBS Certificate Information for any longer than is necessary whether in electronic or paper format. This is generally for a period of up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep DBS Certificate Information for longer than six months, school will consult the DBS about this and will give full consideration to the Data Protection and Human Rights of the individual before doing so. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail.

The only exceptions allowed by the DBS are as follows:

- For establishments regulated by the commission for Social Care Inspection (CSCI) then certificates must be destroyed after 12 months
- For staff employed in residential schools, certificates must be destroyed after 12 months
- For certificates relating to fostering or adoption, certificates must be destroyed after 36 months

### **Disposal**

Once the retention period has elapsed, school will ensure that any Certificate Information is immediately destroyed by secure means, eg; by shredding. While awaiting destruction, DBS Certificate Information will not be kept in any insecure receptacle (e.g. waste bin or confidential sack). School will not keep any photocopy or other image of the DBS Certificate Information or any copy or representation of the contents of DBS Certificate Information. However, notwithstanding the above, school may keep a record of the date of issue of DBS Certificate Information, the name of the subject, the type of DBS Certificate requested, the position for which the DBS Certificate Information was requested, the unique reference number of DBS Certificate Information and the details of the recruitment decision taken. School will ordinarily keep this information as part of its Single Central Record [SCR]. School will periodically review DBS information held on its SCR and manage and dispose of DBS records and information as per the SCR guidance and process available at the time.

## Appendix 6 - Definition of Regulated Activity: PRE Sept 2012

Involves contact with children or vulnerable adults

Of a specified nature or	"Frequently, intensively and/or overnight"
In a specified place	

No distinction made between paid and voluntary work

In detail:

<p><b>Of a specified nature:</b>  <i>E.g. teaching, training, care, supervision, advice, treatment or transport</i></p>	<p>"frequently, intensively and/or overnight"</p> <p>once a week for most services, <i>but once a month or more for health and social care services involving personal care</i> takes place on 4 days in one month or more                      Overnight: between 2 – 6am</p>
<p><b>In a specified place:</b>  <i>E.g. Schools, Pupil Referral Units, Childcare premises (nurseries), Children's homes and hospitals, children's detention facilities, children's centres, adult care homes</i></p>	

The guidance states that there is only a requirement to check if the frequent / intensive test takes place in a single specified setting or in a specified role

E.g., Directors of Children's Services, members of Youth Justice Board, School Governors.

There is no distinction made between paid and voluntary work.