

# Disclosure and Barring Service (DBS) checks for those providers who register with Ofsted

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This factsheet sets out Ofsted's position on using existing Disclosure and Barring (DBS) checks for providers who register with Ofsted.

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## Introduction

This factsheet sets out our position on the Disclosure and Barring Service (DBS) checks process for those providers who register with Ofsted. It includes details about:

- when we will accept existing DBS checks for applicants for registration and those associated with them (for example, people who live in a house where childcare takes place) to check suitability or fitness
- whether we will let people start work before they have a DBS check
- DBS checks for agency workers and those moving jobs
- DBS checks on children who reach 16 years of age and are living or working on domestic premises where childcare takes place – this applies to childminders and childcare on domestic premises registered on the Early Years Register and/or on the Childcare Register
- whether a student on placement on domestic premises has to have a new DBS check and, if so, whether this requirement depends on the length of placement.

This factsheet only covers what we will accept as evidence of a DBS check to make a suitability/fitness decision. The normal processes for checking that a DBS check is 'clear' are the same.

We do not routinely repeat DBS checks on people who are already registered or agreed as suitable/fit to work with children. We also do not need to carry out a DBS check on those people who are registered with us and have never had one, for example, because they were employed or registered before the DBS scheme began<sup>1</sup>. We have the right to recheck a person if we have concerns, but we do not need to recheck someone every three years.

## Retention of DBS checks

Providers should destroy original DBS disclosures within six months, which is the timeframe set out in the DBS code of practice.<sup>2</sup> Providers should not retain the DBS disclosure itself but need to be able to show us they have kept a record of it. Inspectors will review the provider's records to check that the required checks have been completed.

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<sup>1</sup> On 1 September 2012 the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) merged into the Disclosure and Barring Service (DBS) - CRB checks are now called DBS checks.

<sup>2</sup> For more information visit:  
<http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/>

## Accepting existing DBS checks

The DBS does not support portable DBS checks<sup>3</sup> and says that any organisation that accepts an existing DBS check does so at its own risk. The DBS wants to minimise the risk to children. The DBS says that organisations must verify any existing check to see if there was any information held by local police forces provided with the check, and make sure that the proper identity checks were done by the organisation that got the DBS check.

The regulations covering providers on the Early Years and Childcare Registers make it clear that applicants for registration must provide Ofsted with an enhanced disclosure application form. This requirement cannot therefore be satisfied if the provider gives us an existing DBS disclosure that has been obtained by another organisation. Therefore, we can only accept existing DBS checks for those where we decide on their suitability/fitness if the check was obtained by Ofsted through an enhanced disclosure application given to us by the individual and is less than three years old. This helps us make sure that the check was done by an organisation that properly checked the person's identity, and checked that the person was suitable/fit for a role in childcare and children's social care.

Ofsted's decision on portability only applies to those individuals and organisations for whom Ofsted makes the suitability decision; it does not apply to other people working in settings, where the employer has decided whether or not to allow portability (see separate section below on other staff members).

Our decision on portability only applies to:

- childminders and other childcare providers on the Early Years Register
- childminders and other childcare providers on the Childcare Register, both voluntary and compulsory parts
- people in a childminder's household and other people living or working on childminding premises or where childcare on domestic premises takes place
- the manager of registered childcare settings which provide childcare on domestic premises (we are not responsible for checking the manager of childcare on non-domestic premises)
- children's social care providers and the responsible individual
- the manager of registered children's social care settings

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<sup>3</sup> Portable DBS checks are when an existing DBS check is used, for a new member of staff, rather than requesting a new DBS check.

## **Starting work before a DBS check is obtained – childcare and non-residential children’s social care<sup>4</sup>**

Ofsted will not register a person until we have obtained DBS checks on the person applying for registration and any other person who requires a DBS check because of their association, for example a member of the childminder’s household, or a member of the committee running a playgroup.

However, for other staff, where Ofsted does not decide on suitability, it may be possible in some circumstances for staff to start work before their DBS check is complete, subject to the following rules:

- In exceptional circumstances, when to wait for the DBS check might disrupt the care of children, staff may start work before a DBS check is complete.
- These rare situations may only happen when the DBS check has been applied for – if an application has not been made, the person may not start work.
- Any unchecked person must never be left unsupervised with children, and all children must always be within sight and hearing of a checked person.
- The employer (where there is one) must show Ofsted that there are robust recruitment and employment practices in place, including details of a DBS check on staff members.

## **Use of DBS checks by other organisations**

The registered person for children’s social care is expected to be able to demonstrate that they consistently follow good recruitment practice, and all applicable current statutory requirements and guidance, in staff recruitment and carers’ selection. This includes Disclosure and Barring Service (DBS) checks. Ofsted does not allow portability of DBS checks but it cannot prevent other organisations, such as a company running a children’s home or nursery, from allowing portability. The DBS guidance states that any organisation which uses an existing DBS check rather than requesting a new check does so entirely at its own risk.

## **Our role in checking employers who use existing DBS checks**

When an organisation, such as children’s home or nursery, accepts existing DBS checks, inspectors will not automatically lower the judgement given at inspection. However, inspectors must ensure that the employer complies with the DBS guidance on portability.

The DBS gives guidance to organisations that accept existing DBS checks:

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<sup>4</sup> This means settings that are non-residential. These rules do not apply to staff who are not resident but where the children are resident in the setting.

- DBS checks do not last for an agreed period of time.
- Information in a DBS check is only correct at its date of issue.
- Using an existing check does not amount to a fresh check.
- A person's criminal record, or other information, may have changed since the last DBS check.
- People may be required by law to do a fresh check of the list of those barred from working with children and vulnerable adults held by the Disclosure and Barring Service so the DBS check may not be portable.<sup>5</sup>
- Organisations should always see an original DBS check, not a photocopy, as the DBS check contains security features to prevent tampering or forgery.

The Home Office has more detailed guidance about the risk assessment framework that organisations should use if they do accept existing DBS checks<sup>6</sup>. The DBS's guidance on assessing risk says that employers should ask themselves the following questions before accepting an existing DBS check:

- Is the level of the DBS check the same as the level you need?
- How old is the DBS check?
- Is the previous DBS check for a similar job to the one which you need a DBS check for now?
- Have all checks that you need been carried out?
- Have you checked the person's identity to make sure that the person showing the DBS check is the person the check was done for? For instance, have you seen different identity documents with their name, address, date and place of birth?
- Is the person still living at the same address as the one on the DBS check?
- If it is an enhanced check, have you checked from the previous countersignatory if any extra information was given in a separate letter?
- Have you got the consent of the person to talk to the other organisation?

Where an employer has used an existing DBS check, inspectors will look at how the organisation has used the DBS guidance on assessing the risk. Inspectors will look at the evidence given by the employer about their steps towards complying with the DBS guidance. In particular, inspectors will check that the employer has:

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<sup>5</sup> <http://www.legislation.gov.uk/ukpga/2006/47/contents>

This list replaced the three former barred lists – Protection of Children Act (POCA), Protection of Vulnerable Adults (POVA) and List 99

[www.opsi.gov.uk/ACTS/acts1999/ukpga\\_19990014\\_en\\_1](http://www.opsi.gov.uk/ACTS/acts1999/ukpga_19990014_en_1) and  
[www.opsi.gov.uk/acts/acts2000/ukpga\\_20000014\\_en\\_1](http://www.opsi.gov.uk/acts/acts2000/ukpga_20000014_en_1).

<sup>6</sup> <http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/>

- applied for a new enhanced DBS check, even if they are letting the person start work using an existing check
- noticed any unexplained gaps in a person's employment and if this is the case, that they have not let the person start work until they have their own DBS check. (Employers should not use an existing DBS check if there has been a break of more than three months in service.)
- checked the details on the existing DBS check using forms of identity for the person concerned, for example, they have cross-referenced address and date of birth details from other identity documents
- seen the original DBS certificate, not a photocopy tried to contact the person who requested the original check, to confirm if any other information was released through a separate letter. (If other information was released, the employer must not let the person start work until they have a new DBS check.)
- only accepted an existing DBS check if it is at the right level, for example they have not accepted a standard check if an enhanced check is needed
- not accepted an existing DBS check that is too old. (A DBS check does not last for an agreed length of time but it is best to expect that an existing check is no older than 12 months.)
- made sure that the person does not have unsupervised access to children, until the new DBS check can confirm the person's suitability.

If the employer cannot show that they have taken these steps, then the inspector will reflect this in the inspection judgement(s). If there is evidence that the employer has taken action in line with the DBS check guidance, then this will not affect the inspection judgement(s).

## Repeating DBS checks

DBS checks do not run out but they provide information about a person's criminal record history at one point in time and must be used with other methods to check suitability. Our inspections provide the best means of checking that someone continues to be suitable to work with children. We have agreed with the Department for Education that we will not routinely repeat DBS checks to confirm suitability. We do, however, reserve the right to repeat any check – including DBS – if we get information that suggests a person may no longer be suitable.

For those we do not check – such as the manager and staff in nurseries that operate on non-domestic premises and all staff in children's homes, other than the manager – inspectors will take these points into account when inspecting and reporting on settings. As a DBS check does not run out and makes up only part of the picture about suitability, inspectors will not routinely set a recommendation or action that a provider repeats DBS checks on staff. Inspectors will also not downgrade an inspection judgement just because a provider has not routinely repeated DBS checks. A provider may think it is good practice to repeat DBS checks but this is not required



by law and we cannot insist this is done. In relation to registered children's social care provision, inspectors will take account of the national minimum standards and the provider's recruitment and employment practices, including how they deal with any concerns, in judging the suitability of staff.

## **DBS checks for those moving jobs**

We use the same principles in childcare and children's social care for people moving jobs. These principles are:

- A new DBS check is not required when a person moves jobs in the same organisation unless:
  - the new job gives greater access to children or has more responsibility; such as a child care worker moving within the company to become a senior child care worker
  - there has been a break of more than three months between leaving the old post and taking up the new post
  - there are concerns about the person, which may affect his or her suitability/fitness.
- If any of the above points apply, then the person will need a new DBS check and may not start work until it has been received, as in the sections above on starting work before a DBS check.
- The person will need a new DBS check, as in the other points set out in this guidance, if they are moving to a new organisation.

## **DBS checks for agency staff**

Employment agencies and businesses must show a childcare organisation that the person put forward for a childcare position has been checked against the relevant list of those barred from working with children and vulnerable adults held by the Disclosure and Barring Service within the last 12 months. Employment agencies and businesses must provide written confirmation of this to the childcare organisation employing the person.

As regulators, we have the same process to check suitability/fitness. This means that providers or managers of childcare and children's social care settings must show written confirmation from the agency that a DBS check has been carried out within the last 12 months to show that a person is suitable/fit.

## DBS checks on children on domestic premises who turn 16

In terms of initiating DBS checks when a child turns 16 years of age within a childminder's household, or in childcare on domestic premises, our position is as follows:

- All people aged 16 and over, living or working in households where childminding or childcare on domestic premises is provided, must be suitable to be in regular contact with children
- We are responsible for carrying out any necessary checks and making the suitability decision, as childminders and others providing childcare on domestic premises are not entitled to obtain an enhanced DBS check for their own household members. This will include checks on the manager for childcare on domestic premises.

We ask applicants for registration as childminders and childcare on domestic premises to give us information about household members, including the dates of birth of all their children under 16 years of age. We also expect these providers to notify us of any changes to people living in their households. We require this information so that we can make sure that when a person in a household turns 16, we take steps to carry out a DBS check on them. Inspectors will check at each inspection whether there are any children about to turn 16 years of age, or who have turned 16 since the last inspection, and to establish whether any new people have joined the household.

We expect all registered childminders and childcare providers on domestic premises, to tell us about changes to members of their household. However, we do not expect such providers to tell us when a member of their household reaches their 16<sup>th</sup> birthday. This is why we ask inspectors to check, before the inspection, whether any people recorded on our system as household members have turned 16, or are about to do so.

Where we find that a member of the household has turned 16, we will not penalise the childminder or childcare provider for not telling us, as long as the provider had told us that the individual was a member of their household. However, we may take action against a childminder or provider of childcare on domestic premises if they have failed to notify us of a new household member.

We only regard legal requirements about household members as **not met** if:

- the person we are attempting to check fails to respond to our requests to undergo a DBS check; or
- if the childminder or childcare provider on domestic premises has failed to notify us of a new person joining or leaving the household, including the birth of a new baby.

If, during an inspection, we have reason to believe that a childminder or childcare provider on domestic premises has withheld information from us, or has failed to inform us of a change to their household members, then this is a breach of legal requirements and will prompt an inspection judgement of 'inadequate' for safeguarding. In such cases, we will consider taking formal enforcement action against the provider as failure to notify us is also an offence.

## **Students on work placements, volunteers and occasional visitors**

As set out above, Ofsted takes responsibility for undertaking DBS checks on those who are living or working on domestic premises, including childminding and childcare on domestic premises. Therefore, Ofsted will need to obtain an enhanced DBS check on students or volunteers working with childminders and other childcare providers on domestic premises who are to have regular, unsupervised contact with children. There are no provisions in the relevant legislation which state that the legal requirement only applies to placements of a certain length.

There is no definition of 'regular contact' in this legislation, so Ofsted will take a common sense approach to deciding what is 'regular'. For example, a student could have regular contact with children during the course of a short placement. Where a student on a work placement is likely to have regular contact with children, Ofsted will undertake a DBS check on that student. Where a student does not have regular contact with children (for example if they are only attending the placement as a 'one-off' arrangement) Ofsted will not require a DBS check. In such cases, the childminder or childcare provider must ensure that the student or volunteer is never left in unsupervised contact with children.

We apply the same principles in deciding whether or not a person is a regular visitor to the household. For example, when deciding whether Ofsted requires a DBS check on a regular visitor, there is a difference between a friend of a childminder's son who occasionally sleeps over, and an overseas student who is living in the house for several months. We will decide whether a DBS check is required on a regular visitor, taking account of how frequently, and for how long, the person is visiting the house.

## **The DBS on-line updating service**

In the summer of 2013 the DBS are planning to launch a new subscription service which will let individuals keep their DBS certificates up-to-date so that they can take the DBS certificate with them when they move jobs or roles. Employers and Ofsted will then be able to carry out free, online, instant checks to see if any new information has come to light since the certificate's issue – this is called a status check.

This will save individuals from having to complete new application forms or to wait for the checks to come back. This should save people time and money.

This is part of an overhaul of the criminal records regime to give individuals greater control of their own information, allow DBS certificates to be reused when applying for similar jobs and reduce the burden of red tape on employers.

You don't have to join the update service, or pay a fee, to check a DBS certificate. You must however have the individual's consent, be legally entitled to apply for a DBS certificate of the same type and level as you are going to check, and the individual must be subscribed to the update service. When you make a status check, you need to confirm that you're entitled to carry it out and are able to comply with the DBS Code of Practice.

Please go to [www.gov.uk/dbs](http://www.gov.uk/dbs) for more information and guidance.