

## **New requirement for maintained schools to obtain enhanced DBS checks on governors**

### **1. Background**

The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2016 came into force on 18<sup>th</sup> March 2016.

The legislation has been introduced to improve the regulatory framework for maintained school governance and to provide reassurance to the governing body that an individual is not disqualified from holding office as a governor due to criminal convictions.

### **2. Previous Position**

Enhanced Criminal Records checks were previously not mandatory for maintained school governors. However the funding agreements for academies require that in a single academy all governors must be checked and that in a multi academy trust the directors/trustees must be checked (members of the local governing bodies do not have to be, but can be).

Many school governors in maintained schools already hold enhanced DBS certificates (see 5. below).

### **3. New position**

The new Regulations bring the arrangements in the maintained sector into line with the requirements in place for single academies and directors/trustees in multi-academy trusts. They provide:

- (i) Where a governor has been elected or appointed before 1st April 2016 and does not hold an enhanced criminal record certificate, the governing body must apply for such a certificate in respect of that governor by 1st September 2016.
- (ii) Where a governor is elected or appointed on or after 1st April 2016 and does not hold an enhanced criminal record certificate, the governing body must apply for such a certificate in respect of that governor within 21 days of his or her appointment or election.

### **4. Governor Self-Declaration**

In addition to the new requirement for a satisfactory DBS check, there are a range of other restrictions which may disqualify a person from serving as a governor.

For maintained schools these restrictions are set out in the Constitution of Governing Bodies in Maintained Schools: Statutory Guidance. For Academies these are set out in the Articles of Association.

New Local Authority governors are required to complete a self-declaration to confirm that they are not disqualified. It is strongly recommended that all other governors are required to complete a similar declaration prior to taking up or renewing their period of office. A form for this purpose is attached.

Academies will need to adapt this according to the specific restrictions contained within their Articles of Association.

## **5. Existing enhanced DBS certificates**

The Regulations do not specify any requirements relating to accepting a certificate already held by the governor, other than to state if a certificate is held no further check will be required. There are no provisions relating to when the check was obtained or restrictions on which checks can be accepted.

Our best practice advice would be to accept an existing DBS Certificate if:

- It is an Enhanced level check undertaken by a school or academy in England AND
- The individual was employed or engaged as a volunteer or governor in a school or academy in England immediately prior to their election/appointment as a governor.

Similarly, if a governor is an employee of a Local Authority and has an Enhanced DBS Certificate for their employment, a new check is not be required.

The school should ask the governor to produce the certificate and ensure all the details are current and that all pages are available. A copy of the Certificate must not be retained once the appointment is confirmed (see paragraph 10).

Clearly if the governor is an unsupervised Volunteer or employee at your school, they will have had an appropriate DBS Check and new check is not required.

Where the individual is registered with the DBS online update service, the school can carry out an online status check via this system (see 5.1 below).

### **5.1 Registration with the DBS online update service**

Governors, along with employees and volunteers can choose to register with the DBS online update service.

To register the individual must apply within 19 calendar days of the issue date of their DBS Certificate. There is no fee for volunteers, including governors.

Where an individual is registered, the school/academy can carry out an on-line status check free of charge, rather than requiring a fresh DBS certificate.

The school/academy will need the individual's:

- written consent;
- name and date of birth;
- DBS Certificate (to confirm the certificate number and that the original check was an enhanced DBS check).

Further information about the online updated service can be found at:

<https://www.gov.uk/dbs-update-service>

## **6. Enhanced DBS checks and the DBS Children's Barred List ("the Barred List")**

Governors as Office Holders are not engaged in Regulated Activity and there is no legal entitlement to undertake a Barred List check.

Governors who are also employees of the school or who work as unsupervised volunteers in Regulated Activity will already have had an Enhanced DBS check with Barred List for this role and a new check is not required.

Other governors may, as part of their governance activities make visits to the school for monitoring etc. which may include spending time in the classroom or unaccompanied on the premises. This in itself does not constitute Regulated Activity which entitles a Barred List Check to be undertaken. This activity would fall within the broad "volunteer" category and must be assessed against the criteria for Regulated Activity according to the exact nature of the activity, how frequently it is carried out and the level of supervision.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/316179/Regulated\\_Activity\\_in\\_relation\\_to\\_Children\\_DfE\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316179/Regulated_Activity_in_relation_to_Children_DfE_.pdf)

Note that "Supervised" does not mean the governor can never be unaccompanied. The statutory definition of supervision in this context requires:

- there must be supervision by a person who is in regulated activity;
- the supervision must be regular and day to day; and
- the supervision must be "reasonable in all the circumstances to ensure the protection of children".

Where governors are carrying out activities in school which meet the definition of Regulated Activity the enhanced DBS check must include a check against the DBS Children's Barred List.

## **7. Applying for a new check**

For governors who do not currently hold an enhanced DBS certificate a new application will need to be submitted within the timescales set out in 3. above. Clearly, the result of the application may be obtained at a later date but the application must be submitted on time (and schools are advised to keep records to show the application has been submitted). This requirement is set out on the Declaration Form and the failure by a Governor to comply with the timescales will render them disqualified from holding office.

On the Essex e-crb system “Governor role” should be selected for Office Holders – this will provide for a DBS check without a Barred List Check. Where the Governor will be undertaking Regulated Activity (see paragraph 6 above) “Volunteer-School Helper role” should be selected – this will provide a DBS Certificate with Barred List Check.

It is unclear at this stage how these Regulations will be enforced. We understand that the statutory guidance “Keeping Children Safe in Education” will be amended to reflect these new regulations. Ofsted guidance is also likely to be updated in line with these requirements and they may form part of the inspection framework.

### **7.1 Re-checking**

There is no requirement to do periodic DBS checks for Governors.

## **8. Who is responsible for ensuring checks are undertaken?**

The Chair of Governors/Trustees are ultimately responsible for ensuring the necessary checks/declarations are undertaken by governors. The Vice Chair or Headteacher may assume this responsibility for the Chair. In both cases the procedures/record keeping etc. may be delegated to the school administrator/headteacher as appropriate.

Where a DBS check is processed by the school, the administrator will be notified when it has been processed. Where there is information on the Certificate, the governor will need to provide a copy of the Certificate to the Chair/Vice Chair/Headteacher for consideration. The requirement to provide the Certificate is set out on the Declaration Form.

## **9. Positive DBS Checks**

Occasionally a DBS Certificate will be positive – meaning it will contain information related to criminal or other relevant offences. Such Certificates should be assessed by the Chair/Vice Chair/Head – this responsibility should not be delegated.

There are a limited number of offences which prohibit a person from holding office as listed on the Declaration Form/Academy Articles of Association.

Other offences must be managed in line with the DBS Code of Practice and assessed on a case by case basis. Employers are required to have a policy regarding the employment of ex-offenders. This requirement is met if the Essex HR Model Recruitment Policy has been adopted.

In accordance with this, all criminal records must be assessed on an individual basis, following discussion with the individual. The following factors must be considered in each case:

- The seriousness/level of the disclosed information eg was it a caution or a conviction.
- How long ago did the incident(s) occur.
- Whether it was a one-off incident or part of a repeat history/pattern.
- The circumstances of the offence(s) being committed and any changes in the applicant's personal circumstances since then.
- The country where the offence/caution occurred.

#### **9.1 Where the offences are sufficiently serious that the person is deemed unfit to serve as a Governor:**

- New governor appointment/elections must be conditional upon application for, and receipt of, a satisfactory DBS check and this must be clear in any election/appointment process. Where the check is not satisfactory the appointment/election will not be confirmed.
- Where there is an unsatisfactory check for an existing governor:
  - Maintained Schools – seek advice from Governor Services.
  - Academies – follow procedures for removal of Governors in line with Articles of Association.

#### **10. Recording DBS checks on governors**

The new Regulations do not specify that the DBS checks should be recorded anywhere.

The statutory guidance “Keeping Children Safe in Education” July 2015 does indicate that academies and free schools should record checks on all members of the proprietor body. It also states that all schools who have carried out checks on volunteers should record these on the Single Central Record. We understand that the statutory guidance “Keeping Children Safe in Education” will be amended to reflect these new Regulations.

We recommend that schools now record governors on their Single Central Record. The required entries for governors will be

- Identity
- DBS Check
- Barred List (where the Governor is engaged in Regulated Activity)

- Checks on individuals who have lived or worked abroad (where applicable)

All other fields can be marked as Not Applicable.

There is no need to record these details again for governors who are already recorded on the SCR as employees or Volunteers.

### **10.1 Record Keeping**

It is not permitted to retain copies of DBS Certificates for any longer than 6 months and they should be destroyed once the appointment/election decision is confirmed. The Certificate Number may be recorded on the Single Central Record for reference purposes and/or the school may keep a print out from the e-CRB system confirming a clear check and/or copy the top part of the Certificate only for a positive check – but this is not required.