



Disclosure &
Barring Service

A Guide to School Governor and Elected Councillor Roles in Wales



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Disclaimer: This is not legal advice. If you need help with making sure you are complying with the law, you should speak to a legal advisor.

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School Governors

Including:

- Member of or clerk to the governing body of an educational establishment
- A person appointed by the governing body of a maintained school to serve on a committee

Type of check

Anyone holding any of the positions above is eligible to be asked to apply for an enhanced level DBS check in the child workforce, but without a children's barred list check.

The legislation:

These roles used to be included in the original definition of regulated activity with children, as set out in the Safeguarding Vulnerable Groups Act (SVGA) 2006. However, following changes to this definition by the Protection of Freedoms Act 2012 they were removed. This means that the roles are no longer classed as being regulated activity and are therefore not eligible for a barred list check.

The Police Act 1997 (Criminal Records) Regulations 2002 were amended in 2013 to incorporate these roles into the new definition of ‘work with children’. This made the individuals holding these positions eligible to be asked to apply for enhanced level DBS checks in the child workforce, but without a children’s barred list check.

Elected Councillors

Elected councillors are only eligible for an enhanced DBS check in the child or adult workforce **without** a barred list check **if** they are appointed as a member of a committee or sub-committee involved in:

- the delivery of services for children relating to education or social services;
- the delivery of services for adults relating to social services, as explained below.

If the councillor is an appointed member of one of these types of committee, the ‘Position Applied For’ field on a DBS application form would need to reflect this, rather than indicate that the applicant is an elected councillor.

Elected councillors who aren’t members of these committees can only apply for a basic check for themselves. This is because the role is not named in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 or included in the Police Act 1997 (Criminal Records) Regulations.

Committee/Sub-committee Members

Individuals appointed as local authority committee and sub-committee members can be eligible to be asked to apply for an enhanced level DBS check in the child and/or adult workforce, depending on which of the groups the committee is involved with. There is no eligibility for a check against either the children's or adults' barred lists in these circumstances.

The legislation:

These roles used to be included in the original definition of regulated activity with children and adults, as set out in the Safeguarding Vulnerable Groups Act (SVGA) 2006. However, following changes to this definition by the Protection of Freedoms Act 2012 they were removed. This means that the roles are no longer classed as being regulated activity and are therefore not eligible for a barred list check.

The Police Act 1997 (Criminal Records) Regulations 2002 were amended in 2013 to incorporate these roles into the new definitions of 'work with children' and 'work with adults'. This made the individuals holding these positions eligible to be asked to apply for enhanced level DBS checks in the child or adult workforce, but without relevant barred list checks.



Type of check

Committee and sub-committee members can be eligible to be asked to apply for an enhanced level DBS check in the **child** workforce if:

- the local authority carries out any education functions, or social services functions **and**
- the committee relates to any of the above matters.

Committee and sub-committee members can be eligible to be asked to apply for an enhanced level DBS check in the **adult** workforce if:

- the committee relates to any social services functions that relate wholly or mainly to adults who receive a health or social care service within the meaning of Appendix A **or** a specified provision within the meaning of Appendix B.

Appendix A

For a committee to provide social service functions for adults, the adults must receive one of the health or social care services listed below.

- a) residential accommodation provided for an adult in connection with any care or nursing he requires
- b) accommodation provided for an adult who is or has been a pupil attending a residential special school, where that school is –
 - i. a special school
 - ii. an independent school which is in Wales
 - iii. an independent school which provides places for children with special educational needs

- iv. an institution within the further education section which provides accommodation for children
 - v. a 16 to 19 Academy which provides accommodation for children
- c) sheltered housing
- d) care of any description or assistance provided to an adult by reason of his age, health or any disability he has, which is provided to the adult in the place where he is, for the time being, living, whether provided continuously or not
- e) any form of health care, including treatment, therapy or palliative care of any description
- f) support, assistance or advice for the purpose of developing an adult's capacity to live independently in accommodation, or sustaining their capacity to do so
- g) any service provided specifically for adults because of their age, any disability, physical or mental illness, excluding a service provided specifically for an adult, with one or more of the following disabilities (unless that person has another disability) –
- i. dyslexia
 - ii. dyscalculia
 - iii. dyspraxia
 - iv. Irlen syndrome
 - v. Alexia
 - vi. auditory processing disorder
 - vii. dysgraphia
- h) any service provided specifically to an expectant or nursing mother in receipt of residential accommodation pursuant to arrangements made under section 21(1)(aa) of the National Assistance Act 1948 or care pursuant to paragraph 1 of Schedule 20 to the National Health Service Act 2006.

This list is taken from The Police Act 1997 (Criminal Records) Regulations 2002 – Regulation 5B Work with adults, paragraph 9. More details about the legislation relating to the positions can be found in the Adult Workforce Guide on the DBS website.

Appendix B

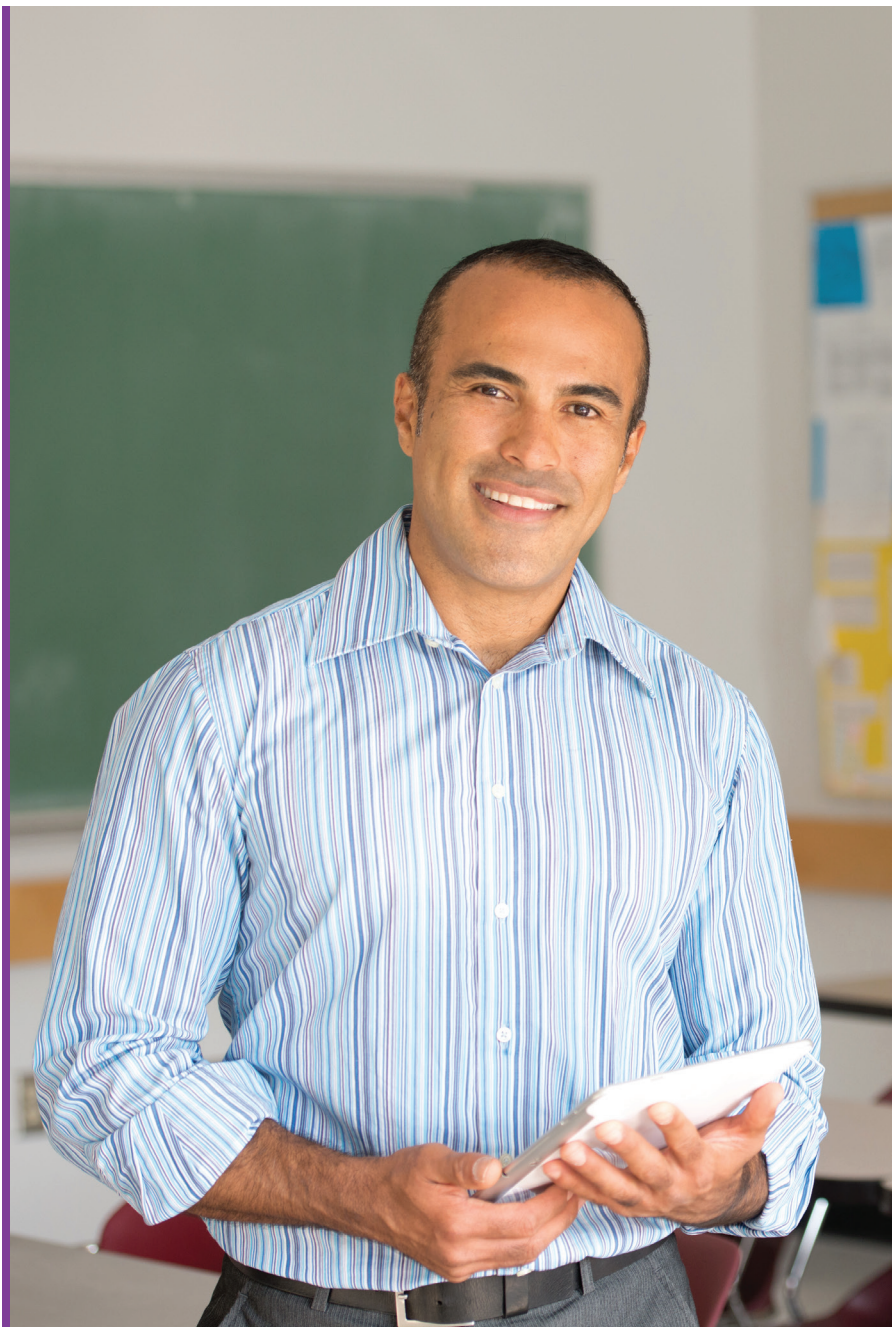
For a committee to provide social service functions for adults, the adults must be in receipt of one of the provisions listed below.

- a) the detention of an adult in lawful custody in a prison, a remand centre, young offender institution or a secure training centre or an attendance centre
- b) the detention of a detained person who is detained in a removal centre or short-term holding facility or in pursuance of escort arrangements made under section 156 of the Immigration and Asylum Act 1999
- c) the supervision of an adult by virtue of an order of a court by a person exercising functions for the purposes of Part 1 of the Criminal Justice and Court Services Act 2000
- d) the supervision of an adult by a person acting for the purposes mentioned in section 1(1) of the Offender Management Act 2007
- e) the provision to an adult of assistance with the conduct of their affairs in situations where –
 - i. a lasting power of attorney is created in respect of the adult in accordance with section 9 of the Mental Capacity Act 2005 or an application is made under paragraph 4 of Schedule 1 to that Act for the registration of an instrument intended to create a lasting power of attorney in respect of the adult
 - ii. an enduring power of attorney (within the meaning of Schedule 4 to that Act) in respect of the adult is registered

in accordance with that Schedule or an application is made under that Schedule for the registration of an enduring power of attorney in respect of the adult

- iii. an order under section 16 of that Act has been made by the Court of Protection in relation to the making of decisions on the adult's behalf, or such an order has been applied for
- iv. an independent mental capacity advocate is or is to be appointed in respect of the adult in pursuance of arrangements under section 35 of that Act
- v. independent advocacy services (within the meaning of section 187 of the National Health Service (Wales) Act 2006) are or are to be provided in respect of the adult
- vi. a representative is or is to be appointed to receive payments on the adult's behalf in pursuance of regulations made under the Social Security Administration Act 1992
- f) payments are made to the adult or to another person on the adult's behalf under arrangements made under section 57 of the Health and Social Care Act 2001
- g) payments are made to the adult or to another person on the adult's behalf under section 12A(1) or under regulations made under section 12A(a) of the National Health Service Act 2006 or under regulations made under section 12A(4) of that Act

This list is taken from The Police Act 1997 (Criminal Records) Regulations 2002 – Regulation 5B Work with adults, paragraph 10.



Further Information

Further information on eligibility can be found on our website **www.gov.uk/dbs**.

By clicking the Eligibility Guidance heading, you will be able to access:

- DBS eligibility tool which may help you establish whether a role is eligible for any level of DBS check.
- DBS workforce guides
- Department for Education guidance on regulated activity with children
- Department of Health guidance on regulated activity with adults
- Statutory guidance from the Department for Education on supervision

It is important to make sure that the law allows you to submit a DBS application. You are legally responsible for making sure you can submit applications and should be aware of the legislation that supports each application in case we need further clarification.





Disclosure & Barring Service

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