

## **Disclosure and Barring Service Policy**

### **SUMMARY**

- 1.1 Due to changes in legislation following the Protection of Freedoms Act 2012 and advice from Ofsted, changes were needed to the existing Criminal Records Check Policy. Previously, the Criminals Record Bureau (CRB) were responsible for undertaking the checks, this has now changed to the Disclosure and Barring Service (DBS) which also need to be reflected in the Policy.
- 1.2 This report sets out the reasons for the changes to the Criminal Records Check Policy. The new Disclosure and Barring Service Policy has been discussed and agreed in principle with the Trade Unions.

### **RECOMMENDATION**

- 2.1 To approve the Disclosure and Barring Service Policy in place of the old Criminal Records Check policy.

### **REASONS FOR RECOMMENDATION**

- 3.1 The Policy needs renaming and changing in line with the latest Ofsted recommendations and legislation.

### **SUPPORTING INFORMATION**

- 4.1 A report went to Chief Officers Group in January 2013 informing them of the major changes as a result of the Protection of Freedoms Act 2012. The new policy reflects the changes outlined in that report and the latest guidance from Ofsted.

- 4.2 The major changes to the policy are as follows:
- All reference to CRB removed and replace with the DBS
  - Clarification on who the policy applies to
  - Removal of the need for renewals of a DBS every three years
  - Inclusion of the need for Agencies or third party staff to give us written notification that all necessary employment checks, including enhanced DBS have been carried out.

## OTHER OPTIONS CONSIDERED

- 5.1 None. Not reflecting the legislative changes is not an option

**This report has been approved by the following officers:**

<b>Legal officer</b> <b>Financial officer</b> <b>Human Resources officer</b> <b>Estates/Property officer</b> <b>Service Director(s)</b> <b>Other(s)</b>	Janie Berry Martyn Marples  Steve Sprason Karen Jewell, Nick O'Reilly Andy Hills, Richard Boneham, Wendy Johnson
<b>For more information contact:</b> <b>Background papers:</b> <b>List of appendices:</b>	Tina Holmes 01332 643894 tina.holmes@derby.gov.uk None Appendix 1 – Implications Appendix 2 – DBS Policy

<b>IMPLICATIONS</b>
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**Financial and Value for Money**

- 1.1 Withdrawing 3 yearly renewal for all employees except those in Social Care will reduce the cost of checks for Derby City Council.

**Legal**

- 2.1 The new policy meets the requirements of the Protection of Freedoms Act 2012.

**Personnel**

- 3.1 None

**IT**

- 4.1 None

**Equalities Impact**

- 5.1 None

**Health and Safety**

- 6.1 None

**Environmental Sustainability**

- 7.1 None

**Property and Asset Management**

- 8.1 None

**Risk Management**

- 9.1 None

## **Corporate objectives and priorities for change**

- 10.1 Strengthening practice in line with Ofsted guidance will support the Council's safeguarding agenda.



DERBY CITY COUNCIL

# Disclosure and Barring Service Policy

Report Appendix TWO

## Purpose

**This policy sets out the framework for the Council to assess criminal records of current and potential employees, and unpaid workers. The Council will obtain relevant criminal information through the Disclosure and Barring Service (DBS).**

The policy is part of the Council's commitment to safeguarding children and adults in regulated activity. See Appendix 3 for the definitions of regulated activity relating to children and adults.

## Document Control

Implementation date	July 2014
Author	Tina Holmes
Equality impact assessment date	
Version	2
Revised/updated	July 2014. Legislative changes from the Protection of Freedoms Act 2012

## **1. Policy application**

- 1.1 The policy will apply to those seeking, or in, paid or unpaid work with the Council that involves working with children or adults, where the work is classed as a regulated activity. See Appendix 3 for the definitions of regulated activity.
- 1.2 In addition, fostering and adoption boards, elected members, taxi drivers, school governors and other proscribed purpose positions will also come under the provisions of the policy, where they involve unsupervised contact with children or adults in regulated activity.
- 1.4 Governing bodies of Derby City Council schools are strongly urged to adopt this policy.

## **2. Principles**

- 2.1 Employees, potential employees and unpaid workers or volunteers will be subject to a DBS check if they work in a role assessed as requiring a DBS. Employees may also need a barred list check carrying out. The flowcharts in Appendix 2 give guidance on which kind of check is required.
- 2.2 Work experience students should not normally require a DBS check. No one under the age of 16 can have a DBS check. Head Teachers/Managers should make an informed assessment as to whether the student is suitable for the placement. It is expected that that risk assessments will address safeguarding issues and control measure are put in place to prohibit unsupervised access to children or adults who meet the regulated activity criteria.
- 2.2 Employee's who are cautioned, charged, summonsed or convicted of a criminal offence should inform their line manager immediately in writing. Failure to disclose such information may lead to disciplinary action being taken.
- 2.3 Your manager, together with Service Director or Strategic Director, will consider whether such conviction or caution could affect your ability to fulfil your contract. The issue may be dealt with in accordance with the relevant Council policy, e.g. Disciplinary and Dismissals and the Employee Code of Conduct. Dependent upon the seriousness and circumstances of the criminal record, and the job the employee is employed in, the Council may consider the offence as gross misconduct which may result in dismissal.
- 2.4 The Council has a duty to make referrals to the DBS when someone has been removed from working in a regulated activity for allegedly causing harm, or posing risk of harm to a child or adult.
- 2.5 It is Council policy that no one should be allowed to start work in a post which requires a satisfactory DBS check before the Disclosure is received. However, there are limited exceptions that can be considered. Approval to start the worker can only be given by a second tier officer of the Council and a full risk assessment must be carried out.

- 2.6 Employees who hold a current DBS with Derby City Council will not require further clearance if they change position within the Council, unless:
- the new position gives greater access to children or vulnerable adults, or has more responsibility
  - 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.
- 2.7 Social Care Staff will be required to undergo a DBS check every three years.
- 2.8 Written notification of all necessary employment checks, including DBS checks, is required from the agency or relevant employer for all agency staff, third party staff or contractors who meet the regulated activity requirements.
- Employment Agencies and businesses putting a person forward for a childcare position must also show that the person 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. Manager's should use Appendix 1 and 2 to check what the DBS requirements are.
- 2.9 The DBS operate an update service which can be used by people who regularly change jobs or work across a number of organisations in regulated activities. Where a person has this facility the Council is able to check online to see if the individual's certificate is still up to date. It is the individual's choice to join this service and the Council will not meet any costs for use of the service.
- 2.10 The recruiting manager must ask the individual for a copy of their certificate and follow the DBS guidelines on using the updating service. If there are any changes to the certificate a full check in line with current guidelines will need to be carried out.
- 2.11 The Council will only meet the costs of DBS checks for employees, potential employees, unpaid workers and elected members for the Council.

### **Recruitment of people with past convictions**

- 2.12 Derby City Council aims to promote equality of opportunity for all, and recognises the importance of employment in the rehabilitation of ex-offenders. Criminal records will only be taken into account when a conviction is relevant.
- 2.13 Having an 'unspent' conviction will not necessarily bar applicants from employment, and will depend on the circumstances and background to the offence(s). The Council will not consider convictions that are not relevant to the work area.
- 2.14 Applicants who are offered employment to certain posts exempted under the Rehabilitation of Offenders Act 1974, will require a DBS check before an

appointment can be confirmed. These include posts working with children or adults in regulated activity.

### **3 Support and guidance**

Further guidance, supportive information and documentation is on the intranet under Human Resources. Further information and guidance is available from (link to be added)

### **4 Roles and responsibilities**

The roles and responsibilities of key stakeholders are summarised in Appendix A.



## Appendix A – Roles and Responsibilities

Chief Executive and Chief Officers Tiers 1 and 2	Head of Service Tier 3	Managers	Employees	HR
<b>Every employee must use the procedure and guidance on iDerby</b>				
<b>Fairness and equality</b>				
To ensure this policy is implemented in a fair, consistent and non-discriminatory manner.	To ensure this policy is implemented in a fair, consistent and non-discriminatory manner.	To ensure this policy is implemented in a fair, consistent and non-discriminatory manner.		Provide advice and guidance to managers and employees
<b>General Operation of the Scheme</b>				
The Strategic Director of each Directorate of the Council is responsible for ensuring the Council and its service users are safeguarded by the use of relevant criminal information.			Employees, potential employees, elected members and unpaid workers must inform the Council of any relevant criminal record or proceedings immediately.	Ensure compliance with the DBS Code of Practice. Including disposal of confidential information
		Managers must check the details of any DBS application form, and certify the evidence of identity in a timely way.	Employees, potential employees and elected members must complete their CRB form accurately, in full, and submit it in a timely way.	Ensure the information relating to DBS is securely maintained.
<b>Risk Assessments</b>				
	Risk assessments must be agreed in the case of appointing a new starter or withdrawing an offer of employment based on information provided by the DBS.	Managers are responsible for a risk assessment of criminal records. The outcome of the risk assessment must be agreed by a second tier officer		Provide advice and guidance to managers and employees

### DBS Checks and when to use them

There are five types of check that are available. A series of flow diagrams are provided in Appendix 2 to enable you to establish, which, if any, level of check is required.

The checks that are available are:

- **Enhanced DBS Check + Childrens Barred List check** - used when someone is undertaking regulated activity relating to children. This check involves a check of the police national computer, police information and the childrens barred list.
- **Enhanced DBS Check + Adults Barred List check** - used when someone is undertaking regulated activity relating to adults. This check involves a check of the police national computer, police information and the adults barred list.
- **Enhanced DBS Check + Childrens and Adults Barred List check** - used when someone is undertaking regulated activity relating to both children and adults. This check involves a check of the police national computer, police information and the childrens and adults barred list.
- **Enhanced DBS Check** - used where someone meets the pre September 2012 definition of regulated activity. This level of check involves a check of the police national computer and police information.
- **Standard DBS Check** - used primarily for people entering certain professions such as: members of the legal and accountancy professions. Standard CRB checks just involve a check of the police national computer and do not include a check of police information or the childrens or adults barred lists.

### Validity of DBS Disclosures

There is no period of validity for a DBS Disclosure. A DBS Disclosure is technically out of date on the day it is issued as a new or further criminal conviction, caution, etc may be recorded against the individual at any time after the issue date.

Contracts of employment set out that if following an individual's appointment they are subsequently cautioned, charged, summonsed or convicted of a criminal offence then they should inform their line manager immediately. Failure to disclose such information may lead to disciplinary action being taken.

## **DBS Eligibility Flow Diagrams**

### **Eligibility for DBS Check**

This flow diagram and supporting guidance is designed to enable you to identify:

- a) is a check required, and
- b) if it is, what type of check is appropriate

The definitions provided in this document are to establish eligibility for a DBS check and have been developed by the Home Office in consultation with the Disclosure and Barring Service, Department of Health and Department for Education. The legislation which underpins these definitions is the Safeguarding Vulnerable Group Act 2006 as amended by the Protection of Freedoms Act 2012.

Derby City Council (DCC) has a duty to ensure it is not unnecessarily

### **Steps to establish if a DBS check is required as defined in the flow diagrams**

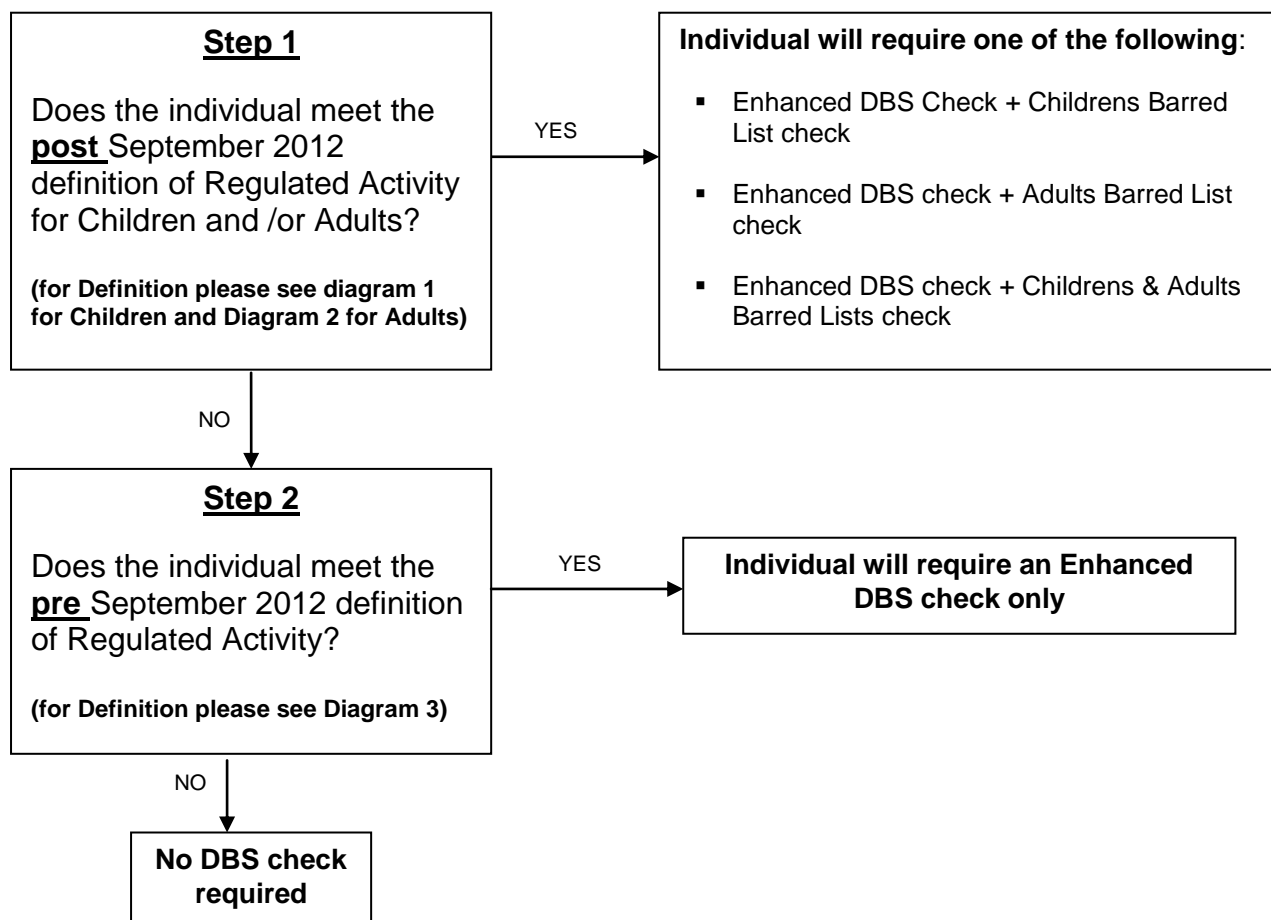


Diagram 1

## Regulated activity relating to Children (Post September 2012 Definition)

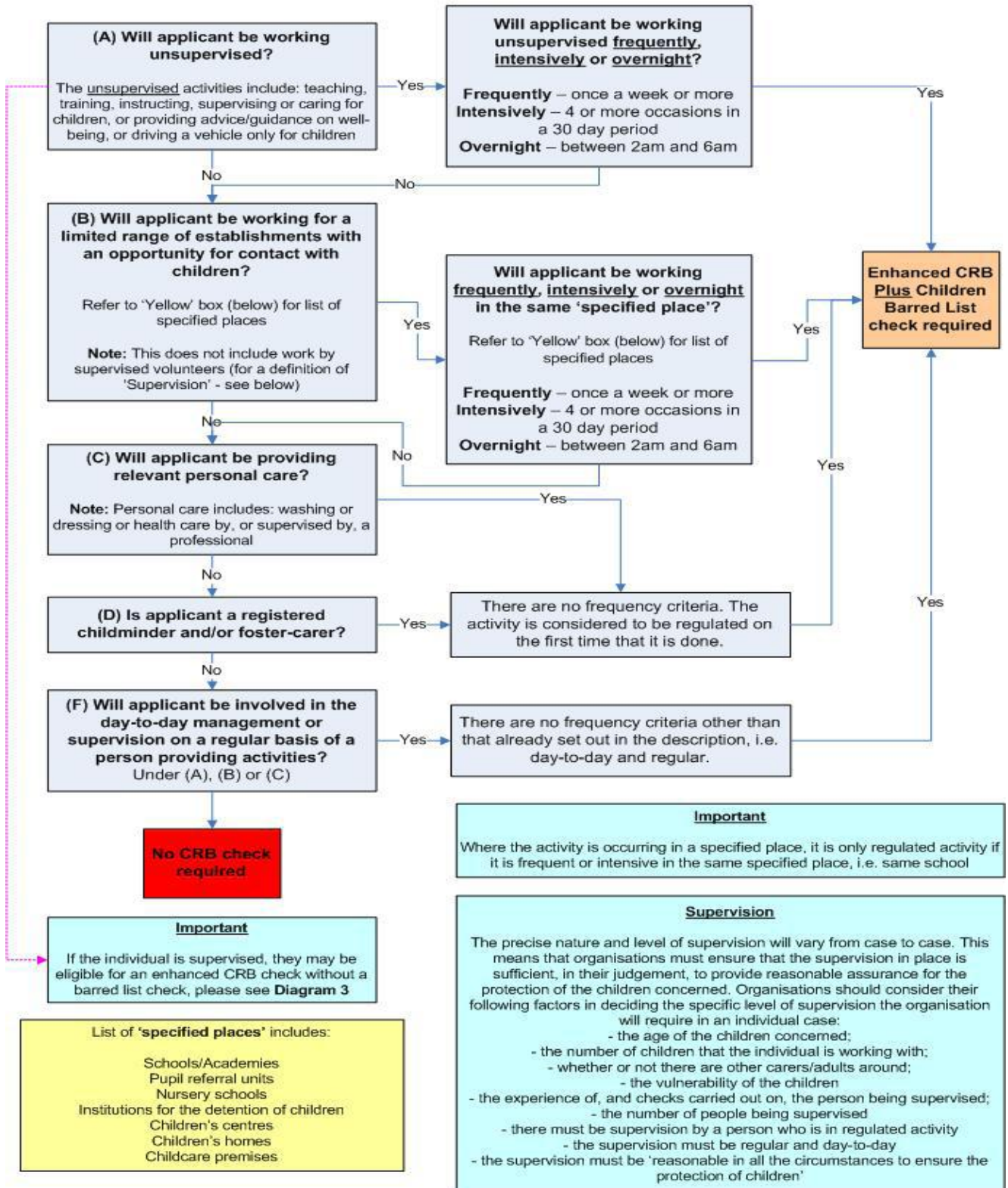
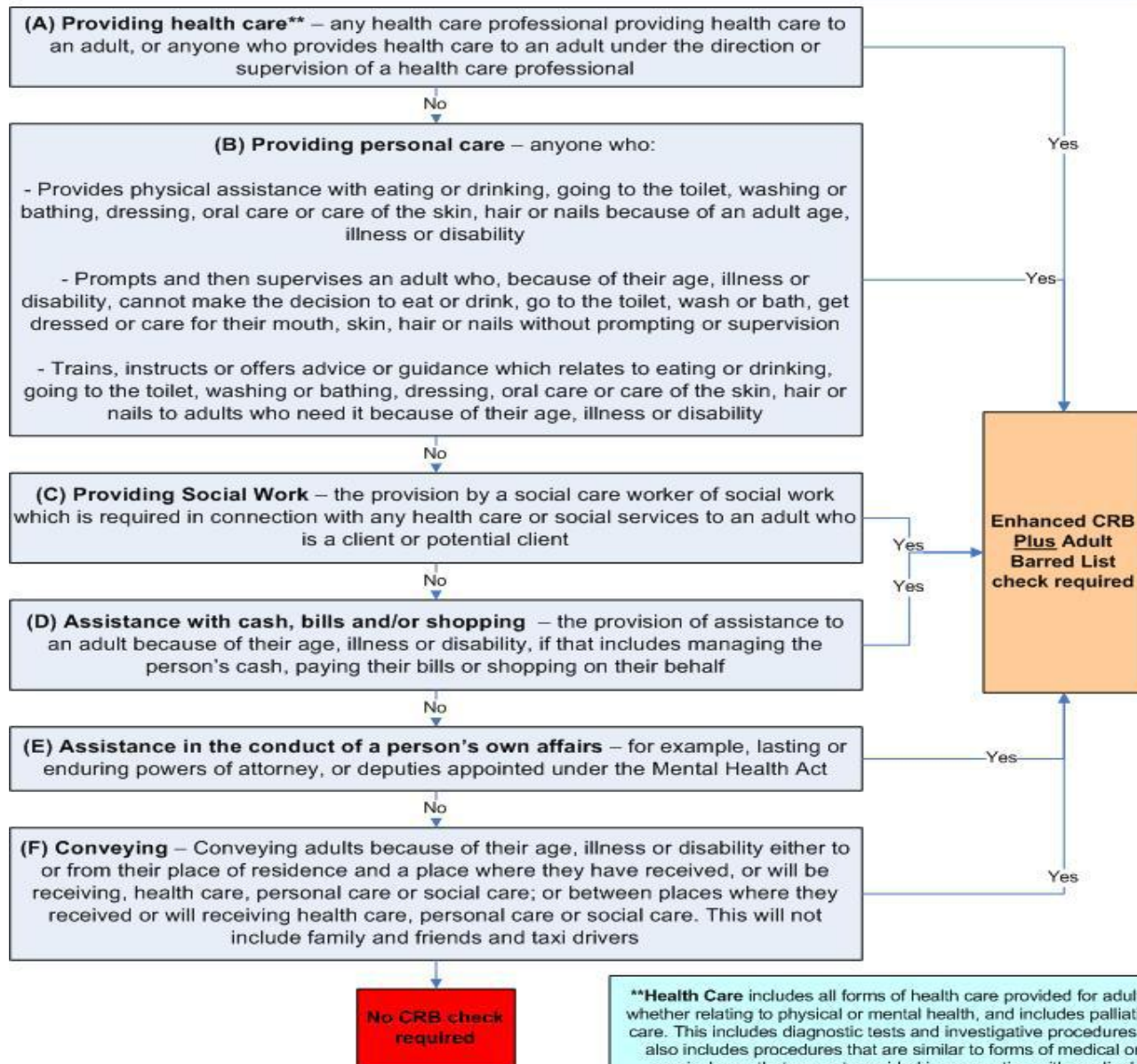


Diagram 2

## Regulated activity relating to Adults (Post September 2012 Definition)

Regulated activity relating to adults identifies activities which, if any adult requires them, lead to that adult being considered vulnerable at that particular time. There is not a requirement to do the activity a certain number of times before it is considered as engaging in regulated activity. Anyone meeting the six definitions below (including a person who provides day-to-day management or supervision of those people) will require an enhanced CRB check with an adults barred list check.



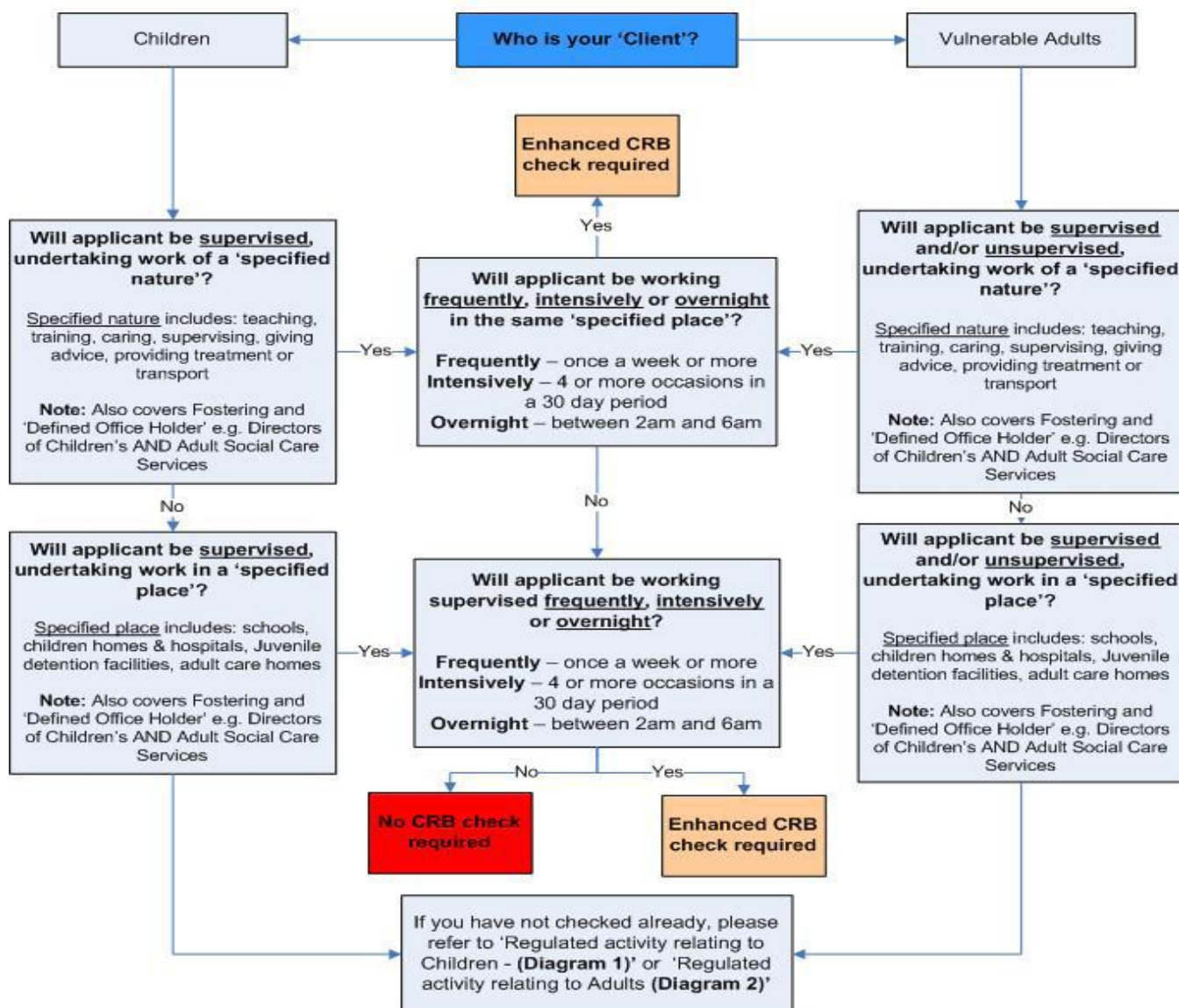
**\*\*Health Care** includes all forms of health care provided for adults, whether relating to physical or mental health, and includes palliative care. This includes diagnostic tests and investigative procedures. It also includes procedures that are similar to forms of medical or surgical care that are not provided in connection with medical condition, i.e. taking blood from a blood donor or cosmetic surgery.

**For an Enhanced CRB check with no barred list check**  
If an individual does not meet the definition of 'regulated activity' as set out above but does fall within the old definition of regulated activity. (See **Diagram 3** to see if they meet the old definition)



Diagram 3

### CRB Check without a barred list check (Pre September 2012 Definition)



#### Important

Where the activity is occurring in a specified place, it is only regulated activity if it is frequent or intensive in the same specified place, i.e. same school

#### Supervision

The precise nature and level of supervision will vary from case to case. This means that organisations must ensure that the supervision in place is sufficient, in their judgement, to provide reasonable assurance for the protection of the children concerned. Organisations should consider their following factors in deciding the specific level of supervision the organisation will require in an individual case:

- the age of the children concerned;
- the number of children that the individual is working with;
- whether or not there are other carers/adults around;
- the vulnerability of the children
- the experience of, and checks carried out on, the person being supervised;
- the number of people being supervised
- there must be supervision by a person who is in regulated activity
- the supervision must be regular and day-to-day
- the supervision must be 'reasonable in all the circumstances to ensure the protection of children'

## Regulated Activity Relating to Children

The new definition of regulated activity relating to children comprises only:

1. Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children. *This is only regulated activity if done regularly*
2. Work for a limited range of establishments with opportunity for contact: for example, schools, children's homes, childcare premises. Not work by supervised volunteers. *This is only regulated activity if done regularly*
3. Relevant personal care, for example washing or dressing; or health care by or supervised by a professional;
4. Registered childminding; and foster-carers.

## Regulated Activity Relating to Adults

The new definition no longer labels adults as 'vulnerable'. Instead, the definition identifies the activities which lead to that adult being considered vulnerable at that particular time. This means that the focus is on the activities and not on the setting in which the activity is received, nor on the personal characteristics or circumstances of the adult receiving the activities. There is also no longer a requirement for a person to do the activities a certain number of times before they are engaging in regulated activity.

There are six categories within the new definition of regulated activity.

### 1. Providing health care

Any health care professional providing health care to an adult, or anyone who provides health care to an adult under the direction or supervision of a health care professional.

### 2. Providing personal care

Anyone who:

- provides physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of an adult's age, illness or disability;
- prompts and then supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without that prompting or supervision; or
- trains, instructs or offers advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability.

### 3. Providing social work

The provision by a social care worker of social work which is required in connection with any health care or social services to an adult who is a client or potential client.

### 4. Assistance with cash, bills and/or shopping

The provision of assistance to an adult because of their age, illness or disability, if that includes managing the person's cash, paying their bills or shopping on their behalf.

### 5. Assistance in the conduct of a person's own affairs

Anyone who provides various forms of assistance in the conduct of an adult's own affairs, e.g. by virtue of an enduring power of attorney.

### 6. Conveying

A person who transports an adult because of their age, illness or disability either to or from their place of residence and a place where they have received, or will be receiving, health

care, personal care or social care; or between places where they have received or will be receiving health care, personal care or social care. This will not include family and friends or taxi drivers.