

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO CABINET

5 SEPTEMBER 2017

REPORT OF THE CORPORATE DIRECTOR – OPERATIONAL AND PARTNERSHIP SERVICES

DISCLOSURE AND BARRING SERVICE CHECKS FOR ELECTED MEMBERS

1. Purpose of Report.

- 1.1 The purpose of the report is to seek agreement from Cabinet to recommend that Council change the existing Disclosure and Barring Service (DBS) policy in relation to DBS checks for elected members, to ensure that the public can have trust and confidence in their elected members.

2. Connection to Corporate Improvement Objectives/Other Corporate Priorities

- 2.1 None.

3. Background.

- 3.1 The Protection of Freedoms Act 2012 (“PFA”) and the formation of the Disclosure and Barring Service (DBS) in 2012 introduced changes to the arrangements for carrying out criminal records checks. These changes scaled back the number of activities that are regulated, with the aim of becoming more ‘proportionate’ in how DBS checks are used.
- 3.2 Under the revised definition, ‘regulated activity’ involves close work with vulnerable groups, including children. The definition of ‘regulated activity’ is set out in Appendix 1. The DBS can challenge applications for Enhanced disclosures on the basis of the definition.
- 3.3 Previously, the definition specifically included councillors who “discharged functions” relating to the social care of vulnerable adults and children for two or more days in any 30 day period. This definition has been formally repealed so no councillors are legally required to undergo a criminal records check as part of assessing their suitability for such roles.

4. Current situation / proposal.

- 4.1 Under our current DBS policy elected members are not subject to a DBS check.
- 4.2 The different types of criminal records checks and the eligibility criteria are set out below:
 - a) **Basic disclosure:** Any individual can apply for a basic disclosure, via Disclosure Scotland, on payment of a fee. A basic certificate will only provide details of unspent convictions. There are no eligibility requirements and anyone can apply.
 - b) **Standard Check:** To be eligible, the position the individual holds must be included in the Rehabilitation of Offenders Order 1974 and (Exceptions) Order 1975 (as

amended). A standard certificate will include details of spent and unspent convictions, cautions, reprimands and final warnings.

- c) **Enhanced Check:** To be eligible, the position must be included in both the 1975 Order and the Police Act 1997 (Criminal Records) Regulations 2002. An enhanced certificate includes the same information as the standard check, plus any additional information held by local police that is reasonably considered relevant to the role being applied for
- d) **Enhanced Check with check of Barred Lists:** To be eligible the position must be eligible for an Enhanced Check and be a role which regularly engages in 'regulated activities'. This provides the same information as an Enhanced Check, and also confirms whether the individual's name appears on the "barred lists".

4.3 It is proposed that all elected members are subject to a **Basic Disclosure** to demonstrate to the public that they can have trust and confidence in their elected representatives.

4.4 In addition to this and with reference to 3.3 above, it is proposed that Cabinet Members and Scrutiny Chairs, in line with their responsibilities to "discharge functions" relating to the social care of vulnerable people and children, are subject to an **Enhanced DBS check** to reflect the important role they play in scrutinising services that are delivered in relation to safeguarding and education functions.

4.5 All Members will need to individually consent to undertaking a DBS check.

4.6 It is our intention to review the position regarding checks for School Governors in due course.

5. **Effect upon Policy Framework & Procedure Rules.**

5.1 None.

6. **Equality Impact Assessment**

6.1 As part of this report an EIA screening report was undertaken. The screening identified that the proposal can be screened out and that a full EIA would not be required.

7. **Financial Implications.**

7.1 The Council would incur a charge of £30.25 for each Basic Disclosure check and £49.25 for Enhanced DBS checks.

7.2 Assuming that all members provide consent, based on current composition, the Council would need to undertake 45 Basic Disclosures and 9 Enhanced DBS checks at a cost of £1834.75. This cost would be met from the Member Services revenue budget.

7.3 This would be a recurring charge every 3 years in line with the Council's DBS policy on renewing DBS disclosures.

8. Recommendation.

- 8.1 Cabinet is asked to approve:
- 8.2 That a report is prepared for Council that recommends that the Council's DBS policy is amended to reflect the proposals outlined in 4.3 and 4.4 above.
- 8.3 That Council seeks individual consent from all members to undertake DBS checks.
- 8.4 That if consent is received, the Council arranges for DBS checks for elected members in line with the proposals at 4.3 and 4.4.

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Background documents: None

Regulated Activity - Definition

Jobs that involve carrying out certain activities for children and adults may require an enhanced DBS check with a check of the barred lists. This will check whether an individual is included in the 2 DBS 'barred lists' (previously called ISA barred lists) of individuals who are unsuitable for working with:

- children
- adults

People on the barred lists can't do certain types of work.

There are specific rules for working with children - known as working in a regulated activity with children. These are different from the rules for regulated activities for adults.

Regulated activity with Children

The new definition of regulated activity (i.e. work that a barred person must not do) in relation to children comprises, in summary:

- unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/ guidance on well-being, or drive a vehicle only for children;
- work for a limited range of establishments ('specified places'), with opportunity for contact: e.g. schools, children's homes, childcare premises. Not work by supervised volunteers;

Work under (i) or (ii) is regulated activity only if done regularly: "regularly" is defined in detail on the following pages under items (a) to (f).

- relevant personal care, e.g. washing or dressing; or health care by or supervised by a professional;
- registered childminding; and foster-carers.

The above summary has been taken from guidance published by the Department of Education. A full detailed description can be found [here](#).

Regulated activity with Adults

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

- 1. Providing Health Care** - The provision of **health care** by any **health care professional** to an adult, or the provision of health care to an adult under the direction or supervision of a health care professional, is regulated activity.
- 2. Providing Personal Care** - Anyone who provides an adult with (i) physical assistance with (ii) prompts or supervises an adult who because of age, illness or disability cannot make the decision to (iii) trains, instructs or provides advice or guidance in relation to;
 - eating or drinking,
 - going to the toilet,
 - washing or bathing,
 - dressing,
 - oral care or care of the skin, hair or nails
- 3. Providing Social Work**
- 4. Assistance with general household matters**
- 5. Assistance in the conduct of a person's own affairs**
- 6. Conveying** - Any drivers and any assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving, health care, relevant personal care or relevant social work, are in regulated activity

General points to note:

1. Regulated activity continues to exclude any activity carried out in the course of family relationships, and personal, non-commercial relationships.⁴
2. An adult is a person aged 18 years or over.
3. A person whose role includes the day to day management or supervision of any person who is engaging in regulated activity, is also in regulated activity.

The above summary has been taken from guidance published by the Department of Health. A full detailed description can be found [here](#).