

MEMBERS' CRIMINAL RECORD CHECK POLICY



1. Purpose and Scope

Peterborough City Council is committed to protecting the wellbeing of the public and those individuals in its care who are considered to be especially vulnerable or at risk and in particular, children and vulnerable adults.

The Council undertakes:

- Not to knowingly permit persons on a barred list to engage in regulated activity;
- To refer persons to the Disclosure and Barring Service if we believe they have harmed or pose a risk of harm to children and vulnerable adults.

This Policy applies to all Members and Co-Opted Members carrying out activities in their official capacity for and/or on behalf of Peterborough City Council.

2. Responsibilities

Criminal record checks play an important part in ensuring that safeguarding responsibilities are appropriately met.

The Head of Constitutional Services will undertake the following checks:

- an Enhanced DBS Check to include the barred lists in respect of every Member and Co-Opted Member whose official activities are regulated activities.
- an Enhanced DBS Check (excluding the barred lists) in respect of every Member and Co-Opted Member (and their nominated substitutes) assigned to the Corporate Parenting Committee or such future eligible Committees ("**Relevant Committees**") which the Monitoring Officer considers should be included.
- a Standard or Basic check as considered necessary on a case by case basis.

Where a Criminal Record Check has already been completed in respect of a Member or Co-Opted Member in accordance with the above arrangements, no further check will be required unless a period of 4 years has elapsed and/or there has been a change in activities/circumstances which require a higher level of check to be completed.

No criminal record checks will be completed without the permission of the Member or Co-Opted Member who will be requested to sign a form of consent both in relation to this and enabling Peterborough City Council to retain the result for such period as is necessary to assess their appointment to/continued membership of the Relevant Committees.

Criminal record checks and any subsequent risk assessment will remain strictly confidential as between the Member or Co-Opted Member concerned and any persons whose involvement is specified in this Policy as being required.

Every effort will be made to ensure that criminal record checks are completed within 14 days of a Member or Co-Opted Member's initial appointment to a Relevant Committee and/or as otherwise required.

Where Peterborough City Council has specified that a criminal record check is required either in relation to Regulated Activity, the Relevant Committees and/or as otherwise determined necessary, participation in those activities may be limited and in some instances, discontinued until such time as the result has been returned.

Any Member or Co-Opted Member can volunteer for a criminal record check at any time and must consult the Head of Constitutional Services as a matter of urgency if they consider that their activities are such that this is a requirement to do so. It will be a requirement where those activities are Regulated Activities and/or if they fall within the definition of the ROA Exceptions Order and the Police Acts.

3. Types of Criminal Record Check

The following forms of Criminal Record Check are available:

- “Basic Disclosure”** This check is available for any individual for any purpose, there are no eligibility criteria. The check provides details of convictions considered unspent.
- “Standard”** This check may only be obtained if the position is included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 (**“the ROA Exceptions Order”**). The check provides details of all spent and unspent convictions, cautions, reprimands and final warnings from the Police National Computer (PNC) which have not been filtered in line with legislation.
- “Enhanced (Without Barred List)”** This check may only be obtained if the position is included in the ROA Exceptions Order and in Police Act Regulations. The check provides details of all spent and unspent convictions, cautions, reprimands and final held on the PNC which have not been filtered in line with legislation and also includes a check of information held locally by police forces.
- “Enhanced (With Barred List)”** This check may only be obtained if the position involved the performance of Regulated Activities and meets the criteria specified above for an Enhanced (Without Barred List) Check. The check provides the same details as an Enhanced DBS Check above but will in addition check against the children's and/or adult's barred lists. The barred lists contain details of those who are considered unsuitable to work with children and/or adults. People on the barred lists can't do certain types of work.

4. Relevant Legislation

ROA Exceptions Order

The ROA Exceptions Order specifies the roles/activities which are eligible for Standard Checks and form part of the requirements for an Enhanced DBS Check.

Whilst Members and Co-Opted Members are not one of the specifically listed occupations, persons engaging in the following activities will be regarded as eligible:

- any work defined as regulated activity relating to children within the meaning of Schedule 4, Part 1 of the Safeguarding Vulnerable Groups Act 2006;
- any work defined as 'work with children' in regulation 5C of the Police Act 1997 (Criminal Records) Regulations 2002;
- Any work defined as regulated activity relating to adults within the meaning of Schedule 4, Part 2 of the Safeguarding Vulnerable Groups Act 2006 (as summarised below);
- Any work defined as 'work with adults' in regulation 5B of the Police Act 1997 (Criminal Records) Regulations 2002;
- Any office or employment which is concerned with and which is of such a kind as to enable a person, in the course of his normal duties, to have access to vulnerable adults in receipt of the following services
 - the provision of care services to vulnerable adults;
 - the representation of, or advocacy services for, vulnerable adults by a service that has been approved by the Secretary of State or created under any enactment.

The Police Acts

The Police Acts specify the roles/activities which form part of the requirement for an Enhanced DBS Check (with or without barred lists).

In relation to 'work with children':

The Police Act 1997 (Criminal Records) Regulations 2002 as amended sets out the roles which are eligible for Enhanced DBS Checks *in relation to children*. In particular, this includes a provision at s.5C(a) which states that they may be obtained in order to consider an:

“applicant’s suitability to engage in any activity which is regulated activity relating to children within the meaning of Part 1 of Schedule 4 to the SVPA 2006 as it has effect immediately before the coming into force of section 64 of the PFA.”

This includes a person who is a member of a relevant local government body if:

- he is a member of a local authority and discharges any education functions or social services functions of a local authority;
- he is a member of an executive of a local authority which discharges any such functions;

- he is a member of a committee of an executive of a local authority which discharges such functions
- he is a member of an area committee, or any other committee, of a local authority which discharges such functions. This includes a reference to any sub-committee which discharges any such functions.

In relation to ‘work with adults’:

The Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013 as amended sets out the roles which are eligible for Enhanced DBS Checks *in relation to adults*. In particular, paragraph 5B(1)(g) includes the the following persons:

- a member of a local authority and discharges any social services functions of a local authority which relate wholly or mainly to adults who receive a health or social care service or a specified activity within the meaning of paragraph (9) or a specified activity within the meaning of paragraph;
- a member of an executive of a local authority which discharges any such functions;
- a member of a committee of an executive of a local authority which discharges any such functions; or
- a member of an area committee.

The Safeguarding Vulnerable Persons Act 2006

The Safeguarding Vulnerable Persons Act 2006 (“**SVPA 2006**”) as amended sets out the definition of Regulated Activities the performance of which necessitates an Enhanced (With Barred List) Check. Regulated Activities can be broadly summarised as follows:

In relation to children:

1. Unsupervised activities: teaching, training, instructing, caring for or supervising children, or providing advice/guidance on well-being, or driving a vehicle only for children;
2. Work for a limited range of establishments (‘specified places’), with opportunity for contact: for example, schools, children’s homes, childcare premises. Not work by supervised volunteers.
3. Relevant personal care, for example washing or dressing; or health care by or supervised by a professional;
4. Registered child-minding; and foster-carers.

Work under 1 or 2 is Regulated Activity only if done regularly i.e. more than temporary and occasion which is defined to be more than 3 days in a 30-day period or overnight between 2 a.m. and 6 a.m. with the opportunity to for face-to-face contact with children.

In relation to adults:

1. Providing health care;
2. Providing personal care (e.g. providing/training/instructing/or offering advice or guidance on 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; or prompting and supervising an adult to undertake such activities where necessary because of their age, illness or disability);
3. Providing social work;
4. Providing assistance with cash, bills and/or shopping;
5. Providing assistance in the conduct of a person's own affairs, e.g. by virtue of an enduring power of attorney; vi. Conveying- transporting 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.

5. Results - Risk Assessment

Risk assessments are required to decide whether the risk of continuing to engage the Member or Co-Opted Member in certain duties can be taken and what precautions and safeguards would be needed to manage and minimise that risk as appropriate.

If a completed criminal record check highlights any disclosure information a risk assessment will be undertaken by the Head of Constitutional Services in consultation with the LADO as necessary. The Head of Constitutional Services will also confirm what if any duties the Member or Co-Opted member is able to fulfil pending the outcome of the assessment.

In undertaking the assessment, consideration will be given to the following factors:

- how relevant the offence is to the position undertaken;
- the nature of the individual's duties and whether the conviction may undermine the Council's trust in them performing or continuing to perform those duties;
- whether any safeguards can be put in place to reduce/remove any risk;
- the seriousness of the offence or matter revealed and its relevance to the safety of other employees, customers, clients or property;
- the age of the individual at the time of committing the offence;
- the individual's subsequent record and length of time since the offence occurred;
- whether the offence was a one off, a pattern or part of a history of offending;
- whether the individual's circumstances have changed since the offence was committed making re-offending less likely;
- whether the offence has been decriminalised by Parliament; and
- the degree of remorse, or otherwise, expressed by the individual and their motivation to change.

This list is not exhaustive and the Head of Constitutional Service must consider the full degree of risk and determine the action required. Prior to making any final determination, the Member will be offered the opportunity to comment on the disclosure and will be notified of the decision as practicable after it has been made. Where the member disagrees with the outcome of the risk assessment, the matter will be referred to the Monitoring Officer who will make a final determination in consultation with the relevant Group Leader.

6. Referral to the Disclosure and Barring Service

Peterborough City Council will refer any Member of Co-Opted Member who it believes has harmed or may pose a risk of harm to children or vulnerable adults to the Disclosure and Barring Service.

