

## Pool Lifeguards and DBS eligibility

### Introduction

This paper has been developed to assist pool operators, managers and staff to establish a consistent approach to decisions about the eligibility of pool lifeguards for Disclosure and Barring Service (DBS) checks as part of their recruitment. It's based on current legislation, DBS guidance and safeguarding good practice, and has been informed by the DBS policy team.

Facility managers have a duty of care to facility users and staff, and this extends to taking reasonable steps to ensure that all staff are suitable for their role. One part of an effective safer recruitment process is to undertake criminal records checks (through the DBS in England and Wales) for all eligible posts and roles. Within leisure facilities there are likely to be individuals in roles that qualify for a range of levels of DBS checks (from basic to enhanced level and children's barred list check).

### The roles of lifeguards in relation to children and young people

Pool lifeguards play a crucial role in protecting children in sport and leisure facilities. Although their duties will vary greatly from centre/operator to centre/operator, from a safeguarding perspective these will always include<sup>1</sup>:

- maintaining vigilant supervision of all pool users and ensuring their safety
- undertaking water rescue
- spotting hazards and preventing accidents (including intervening to address dangerous behaviour)
- administering first aid and carrying out resuscitation when necessary
- giving advice on water safety

The majority of pools are regularly used by significant numbers of children and young people, and lifeguards are typically responsible for supervising young swimmers on a frequent basis. A lifeguard's core duties maintaining vigilant supervision of all pool users and when called upon intervening to address a hazard or risk - are undertaken regardless of whether children in the pool are part of an organised session, lesson or club activity. This applies whether young swimmers are overseen and managed by adults linked to that activity, or engaged in a public swim session with or without an accompanying adult.

### Eligibility criteria for DBS checks

Eligibility for DBS checking is tightly defined in legislation and reflected in guidance<sup>2</sup>. Regulated activity with children (which enables an enhanced level DBS check and a check against the children's barred list) is defined as work which an individual who is barred from working with children must not do.

### Pool lifeguard eligibility criteria for regulated activity

For the pool lifeguard role, the key aspects of regulated activity with children are defined as carrying out any of the following activities<sup>3</sup>:

- teaching, training, instructing, caring for or supervising children, when undertaken on more than 3 occasions in a 30 day period, and the pool lifeguard is not himself supervised by someone else in regulated activity. It does not need to involve the same children.

<sup>1</sup> Based on RLSS UK guidance

<sup>2</sup> DBS guidance: [www.gov.uk/government/organisations/disclosure-and-barring-service/about#dbs-check-eligibility](http://www.gov.uk/government/organisations/disclosure-and-barring-service/about#dbs-check-eligibility)

<sup>3</sup> Dept. of Education:

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/550197/Regulated\\_activity\\_in\\_relation\\_to\\_children.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550197/Regulated_activity_in_relation_to_children.pdf)



(Each pool operator needs to assess what level of supervision would need to be in place to remove the pool lifeguard role from regulated activity with children. This should be based on the following definition of supervision: 'such day to day supervision as is reasonable in all circumstances for the purpose of protecting any children concerned'.)

or

- day to day management, on a regular basis, of someone who is providing a regulated activity in relation to children. In this case this would refer to the lifeguard's manager.

## Pool lifeguard eligibility if regulated activity criteria are not met

The following groups are also eligible for an enhanced DBS check without a children's barred list check:

- individuals considered by their employer to be appropriately supervised in line with the DoE statutory guidance on supervision<sup>4</sup>
- individuals undertaking work which would be regulated activity except that they do not do it often enough i.e. infrequently - more than once but less than 3 days in a 30 day period

## Lifeguards and DBS eligibility

It is the employer's responsibility to decide whether, in light of information and guidance provided, their employees (paid or volunteers) are undertaking regulated activity with children, or are otherwise in roles eligible for a DBS check without the barred list check.

The core pool lifeguarding role (see example above), when undertaken in facilities that are regularly or frequently used by children, clearly meets the legislative DBS eligibility criteria. This is on the basis that the core role involves 'supervising' children in the water and that this is carried out on more than 3 occasions in a 30 day period (these do not need to involve the same children) – irrespective of whether or not there are other adults present with primary responsibility for the child.

Where a pool operator considers that their pool lifeguards are in regulated activity with children they are then a regulated activity provider which brings legal responsibilities set out in the Safeguarding Vulnerable Groups Act 2006. They must make referrals to the DBS when conditions are met and provide information to DBS when requested.<sup>5</sup>

Whether the role falls into the definition of regulated activity with children is also dependent on the degree to which they are deemed by the employer to be effectively supervised by an individual who is them self in regulated activity ('such day to day supervision as is reasonable in all circumstances for the purpose of protecting any children concerned').

The exact title of the post (which may vary from organisation to organisation) is not important in determining eligibility. Eligibility relates to the nature of the role and the tasks a post holder is required to undertake.

## Head of Policy Development at the DBS said on 17 May 2017:

'The DBS policy team has previously been asked our view on the eligibility of pool lifeguards and our response has been that eligibility does exist for lifeguards to apply for a DBS check.

'From details we've been provided on the role, we can surmise that they are expected to supervise the users of the pool, which will include children. This is regardless of whether the children are accompanied by adults.

<sup>4</sup> Dept. of Education:

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/280881/supervision\\_of\\_activity\\_with\\_children\\_which\\_is\\_regulated\\_activity\\_when\\_unsupervised.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/280881/supervision_of_activity_with_children_which_is_regulated_activity_when_unsupervised.pdf)

<sup>5</sup> DBS website referral document set: <https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs>



'As such lifeguards are carrying out 'regulated activity work with children'<sup>6</sup> and are therefore eligible for an enhanced level DBS check in the child workforce with a check of the children's barred lists. In addition, if an individual lifeguard is carrying out this function but they do so infrequently, or are supervised by someone else in regulated activity with children, then they are carrying out a role prescribed in Police Act regulations as 'work with children' and would be eligible for an enhanced level DBS check without a check against the children's barred list.

'There is no indication that lifeguards perform any activities which would mean they are carrying out 'work with adults' or regulated activity with adults. This is because the specific nature of the work does not fall within the legislative criteria. Therefore although they are eligible for a DBS check in the child workforce, potentially with a check of the children's barred list, the adult workforce and adult barred list check should not be requested.'

## Conclusion

The NSPCC therefore recommends that a safer recruitment process for pool lifeguards regularly undertaking duties described above in facilities used by children and young people should include an enhanced DBS check (including a children's Barred List check where the role is considered to constitute regulated activity with children).

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<sup>6</sup> Dept. of Education guidance on Regulated Activity with children:

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/550197/Regulated\\_activity\\_in\\_relation\\_to\\_children.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550197/Regulated_activity_in_relation_to_children.pdf)

