

GUIDANCE FOR EMPLOYERS: SEEKING A SELF-DECLARATION FROM APPLICANTS

Importance of seeking a self-declaration

Requiring applicants to complete a self-declaration as part of your recruitment process can be useful, as it helps the candidate understand the type of information that will be requested as part of your employment check processes. Where relevant to the position being recruited to, this includes any subsequent check you may obtain through a professional body such as the Disclosure and Barring Service (DBS), professional regulator or licencing body.

The applicant's willingness to declare information beforehand gives you a fair indication of their integrity and honesty. It also provides an opportunity for you to have an open conversation with them about the circumstances surrounding any offending behaviour they may have declared and to demonstrate how they have moved on from their past mistakes.

Requiring a self-declaration should be seen as complementary to existing good recruitment practice and as just one part of the overall selection process. It does not substitute the need to carry out the range of pre-appointment checks that are required by law or are available to employers.

It is important to remember that making a recruitment decision based on the information that applicants have self-declared can never be risk free. The full range of pre-appointment checks that organisations must undertake when considering appointments in the NHS (within England) are outlined in our [NHS Employment Check Standards](#).

When to seek a self-declaration

A self-declaration should be requested from all successful applicants, prior to any unconditional offer of employment being made. Where it is considered justifiable to seek a self-declaration earlier in the recruitment process (i.e. for purposes of protecting patient safety) we would recommend that this is only sought from applicants that have been short-listed for interview.

The form should be returned in a separate envelope to the person in the organisation making the final recruitment decision.

Internal recruitment

You are not required to ask an existing member of staff to complete a new declaration form where they are applying for a position in the same organisation and the new role is the same, or very similar, to their current role. Any assessment of an existing employee's continued suitability, integrity and honesty should be based on what information is already known about them during their period of employment. Employees have an ongoing duty to inform their employer of any changes to their registration, fitness to practise and criminal history as part of their terms and conditions of employment, therefore you may wish to ask them to sign a short declaration which

seeks the necessary assurances that their circumstances have not changed since they were first appointed.

How to seek a self-declaration

1. **[Model declaration form A:](#)** this form should only be used when recruiting to positions that are listed in the Exceptions Order of the Rehabilitation of Offenders Act or the Police Act regulations as being eligible for a standard or enhanced disclosure through the DBS (known as exempt positions). When recruiting to an exempt position you are legally entitled to ask applicants about any spent (old) and unspent (current) criminal convictions, police cautions, final warnings and reprimands that are not protected under the DBS filtering rules.
2. **[Model declaration form B:](#)** this form should only be used when recruiting to positions which fall under the provisions of the Rehabilitation of Offenders Act and therefore are not eligible for a standard or enhanced check (known as non-exempt positions). In such cases you are only legally entitled to ask applicants about any unspent criminal convictions, police cautions, final warnings and reprimands that are not protected under the DBS filtering rules.

You must not obtain a standard or enhanced DBS check for non-exempt positions or require applicants to disclose any information about spent convictions. If an applicant provides you with information they are not legally obliged to declare, you cannot act on that knowledge.

Employers in England and Wales can, if they wish, require applicants to have a basic disclosure through Disclosure Scotland to verify any unspent cautions or convictions. Further details on how to go about requesting a basic disclosure can be found on the [Disclosure Scotland website](#).

These declaration forms are subject to periodic review. This ensures that any questions posed remain compliant with requirements under the DBS regime, data protection, human rights and equality law.

It is essential that employers refer to the latest information on the [NHS Employers website](#) to ensure they remain fully compliant with the current law. This will be particularly important where questions are raised as part of any locally developed application forms.

Visit our web pages for further information on [criminal record and barring check requirements](#).

What information should be considered?

Having a criminal history does not necessarily mean an automatic ban to employment in the NHS. The suitability of an applicant with a criminal history may vary, depending on the nature of the job, the type of duties that role will involve and the relevancy, nature and circumstances of the offence.

Any potential risks identified at the recruitment stage needs to be handled sensitively and assessed on a case-by-case basis.

It is important that you only take into consideration information which is relevant to the position being recruited to.

Information for applicants

We would strongly recommend that you consider providing as much information as possible to applicants to explain the type and level of checks that will be undertaken as part of your recruitment process. This will help ensure that the applicant understands what information they will need to provide (especially when filling in the self-declaration request), why this information is being requested and at what stage in the recruitment process it will be required. Applicants should also be made aware of how their information will be assessed, recorded and handled.

Providing a statement which outlines your organisation's policy when recruiting applicants with a criminal history will help reinforce its commitment to ensuring that all applicants are treated fairly and equally.

Information should also signpost the applicant to who within your organisation they can talk to if they have any queries or concerns about answering questions regarding their criminal history. It's also useful to signpost them to where they can seek further independent advice from. This includes (but is not exclusive to) a union representative, the Citizen's Advice Bureau, and charitable bodies such as NACRO or Unlock who provide free advice and support to individuals who have a criminal history. See our useful links section below for further details.

Legislative requirements

When requiring applicants to complete a self-declaration form, it is important that you are mindful of amendments to legislation that affect the type of criminal history information you can obtain and act on, as part of your recruitment process. This includes:

- [Police Act 1997 \(Criminal Record Certificates: Relevant Matters\) \(Amendment\) \(England and Wales\) Order 2013](#) (S.I. 2013/1198) which amends the definition of 'relevant matters' in the Police Act 1997.

This amendment, which came into effect from 29 May 2013, requires police forces to use a much more stringent assessment when considering whether non-conviction information is relevant to the position being recruited to and therefore should be included in a standard or enhanced disclosure certificate. Any decision to include non-conviction information is based on any potential risks identified in order to protect the vulnerable and/or where additional background information may prove invaluable to a prospective employer.

- [Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975 \(Amendment\) \(England and Wales\) Order 2013](#) which amends the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

This amendment introduced the DBS filtering rules which means that certain spent (old) or

minor convictions and cautions are now protected (filtered out) when specific conditions are met and will never be included in a standard or enhanced disclosure certificate. It will be critical for you to be aware of how this impacts on the type of criminal history information you are entitled to ask for and consider as part of your organisation's recruitment process. More information about protected convictions and cautions can be found in the criminal record check standard on the NHS Employers website.

- [Legal Aid and Sentencing and Punishment of Offenders Act 2012](#)
Section 139 makes a number of changes to the Rehabilitation of Offenders Act 1974 in regard to the length of rehabilitation periods which determine when a conviction or caution can be considered spent. It will be important for you to familiarise yourself with these periods when seeking criminal record history for non-exempt positions and where you can only legally ask applicants about current unspent convictions and cautions.

The legislation which permits employers to undertake criminal record checks is periodically subject to change, we would therefore strongly recommend that you regularly review your local recruitment policies and processes to ensure they remain fully compliant with current legislation, including the Data Protection Act. This includes the handling, storage, retention and sharing of any information that might be disclosed by an applicant as part of their application or when providing a self-declaration using this form.

Useful links

- [NHS Employment Check Standards](#) – NHS Employers website
- [Practical guidance on DBS filtering](#) – NACRO website
- [Guidance on the filtering rules](#) - DBS section of the government website