CRIMINAL RECORD CHECKS

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What is a criminal record check?

A criminal record check relates to the data held about a person’s criminal history. The information included in a criminal record may vary between countries, and even between jurisdictions within the same country.

In most cases, a check will include criminal convictions, cautions and other similar offences, such as traffic offences for speeding and drink-driving. In some countries the record is limited to actual convictions issued by a court of law, while others will include arrests, charges, charges missed or pending and even charges of which the individual has been acquitted.

Importance of a criminal record check

Carrying out a criminal record check helps employers prevent unsuitable people from entering the workforce and accessing adults, young people and children who are considered vulnerable because they are receiving health or care services.

Although important, such a check is only one part of the recruitment process. Employers must ensure that any recruitment decision is made on the balance of what a criminal record check provides against all other evidence presented during the application, interview and employment checking stages. Only where employers take this type of holistic approach can they ensure safe and fair recruitment practice.

Where to obtain a criminal record check

In the UK, criminal record checks should be obtained through:

- the Disclosure and Barring Service (England and Wales)
- Disclosure Scotland (Scotland)
- Access NI (Northern Ireland)

Employers should always request checks using the relevant service for their geographical area. All three agencies have access to the same type of data and have reciprocal arrangements in place to share criminal record information across the borders, where it is relevant and appropriate to do so.

This standard outlines the criminal record check requirements that apply to England therefore we refer to services provided by the Disclosure and Barring Service only.

The role of the Disclosure and Barring Service

The primary role of the Disclosure and Barring Service (DBS) is to help employers make safe recruitment decisions by checking information that may be held about an applicant on the Police National Computer (PNC). It also has a team of caseworkers who process referrals about individuals who have harmed or pose a risk of harm to vulnerable groups, with a view to placing them on the adults and/or children’s barred lists.
Types of DBS check

We refer to a range of DBS checks in this document. Each check has different eligibility criteria and provides varying levels of information, as described in the sections below. It is essential for employers to understand the eligibility criteria to ensure they only have access to information they are legally permitted to receive and consider as part of their recruitment process.

Basic disclosure

Basic disclosures must only be obtained for positions that are identified as non-exempt under the Rehabilitation of Offenders Act 1974. The Act provides certain protections to enable individuals who have committed offences in the past, to wipe the slate clean and start afresh after a specified rehabilitation period. Once the rehabilitation period has elapsed, convictions and cautions become spent. Individuals applying for non-exempt positions are not legally obliged to declare spent information and employers must ensure that recruitment processes do not ask applicants for this type of information.

This level of check only contains details of convictions, cautions, conditional cautions and other similar offences that remain unspent. A basic disclosure may also include any unspent convictions or cautions committed in Scotland and Northern Ireland where they would also be considered a criminal offence under English law.

While basic disclosures may be considered for any role which is not eligible for a standard or enhanced check, we would suggest that this should apply to positions which involve high-levels of responsibility, accountability or trust. This may include, but is not limited to, board level positions (such as chief executives and directors) and senior managerial roles (such as in finance where there is responsibility and accountability for the exchange of public monies). Requiring a basic disclosure is discretionary in the NHS, employers must therefore consider whether it would be proportionate to risk to require such a check.

Rehabilitation rules differ across the four borders so employers in England must only obtain basic disclosures from the DBS. This is to ensure that the correct rules are applied, and employers are not at risk of receiving information they are not legally permitted to have.

Employers may, with the individual’s consent, obtain a basic disclosure on their behalf, or they can require individuals to apply for one directly by using the online facility on the DBS website.

Standard check

Standard checks must only be obtained for professions or positions which are listed as exempt under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended).

1 Conditional cautions are issued as a means of handling minor or first offences which the Court considers could be more reasonably dealt with by placing conditions or restorative rehabilitation rather than punishment.
Where appointing to exempt positions, employers can ask for and consider all criminal convictions, cautions, conditional cautions and other such offences that are not protected (i.e. eligible for filtering). This may also include information about any offences committed in Scotland and Northern Ireland that may equally be regarded as an offence under English law. Further information about offences that are protected under the DBS filtering rules can be found in appendix three.

To meet eligibility for a standard check, the position must require the individual in that role to be providing some kind of health service which also allows them to have access to patients as part of their normal duties.

We would advise that access does not include positions where individuals in those roles have no more opportunity to interact with patients than a visitor to the hospital site. This is intended to exclude individuals who have limited or incidental contact with patients. For example, when working or volunteering in public areas where patients may also be present or when needing to pass through patient areas simply to access their normal place of work.

**Enhanced check without barred list information**

To be eligible to request an enhanced check, the position must be an exempt position (as described above) and, in addition, be listed in the Police Act 1997 (Criminal Records) (Amendment) Regulations 2013 as *work with adults* and/or *work with children*. For ease of reference, you will find an extract from the Police Act which outlines eligibility for work with adults and work with children in appendix two.

The enhanced check will provide the same information as a standard check. In addition, it will also include any other relevant information that may be held on local police databases which the chief officer reasonably believes should be disclosed and considered by an employer.

**Enhanced check with barred list information**

Barred list information is not routinely provided in an enhanced check. To be eligible to request information held against the adults and/or children’s barred list(s), the position must involve a regulated activity as stipulated within the Safeguarding Vulnerable Groups Act 2006 (amended by Protection of Freedoms Act in 2012).

The Department of Health and Social Care and Department of Education have produced two factual notes which employers will find helpful to use when considering which NHS positions might fall eligible under regulated activity:

- Regulated activity with adults
- Regulated activity with children

This level of check will include the same information as the enhanced disclosure. It will also outline whether the person is barred from carrying out certain activities with children and/or adults, as may be applicable to the role.
Employers should note that it is unlawful for them to knowingly allow an individual to engage in a regulated activity with the group(s) they are barred from working or volunteering with. Individuals are also committing a criminal offence if they apply for/or engage in any form of regulated activity with the group(s) from which they are barred. Where such cases become evident, employers must be clear about their legal obligations to make a referral to the DBS. Information about an employer’s legal duty to refer to the DBS can be found on the NHS Employers website.

**DBS Adult First service – regulated activity**

The Adult First service enables employers to obtain a fast track check against the adults barred list. This check does not remove the need to obtain a full enhanced disclosure, but it can help to mitigate risk where any delay to recruitment would have a significant impact on the provision of services and/or patient safety. For example, this might be during the winter period when there is an increased pressure on NHS services.

If the check confirms that the individual is not barred from working with adults, and all other recruitment criteria has been met, employers can allow them to start work under supervision\(^2\) while waiting for the outcome of the full enhanced disclosure.

It is important to be mindful that the full enhanced disclosure may include additional relevant information which will need to be considered before any unconditional offer can be confirmed. Employers must make it clear to individuals that any appointment remains conditional until the full enhanced disclosure has been received, regardless of any fast track check against the adults barred list.

There is no equivalent fast track service which enables a check against the children’s barred list. Employers will need to wait until the full enhanced disclosure has been received before allowing individuals work undertake regulated activity with children.

**DBS update service**

The update service is available for prospective and existing employees to subscribe to when they apply for a DBS check. Subscription to the service enables the portability of a previously issued standard or enhanced disclosure certificate where individuals are changing roles and the new position does not alter the level of check required or the type of workforce they will be working or volunteering with (i.e. children, adults or both children and adults).

The service allows for a subscribed person’s criminal record information to be regularly updated. It therefore enables employers to manage risk more effectively where a workers’ criminal record status subsequently changes while employed or volunteering with them.

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\(^2\) The precise nature and level of supervision will vary from case to case. Organisations must ensure that the supervision in place is sufficient, in their judgement, to provide reasonable assurance for the protection of adult patients.
If encouraging subscription to the Update Service, employers should emphasise the individual’s personal responsibility in ensuring their account details are kept up to date (including any changes to their name, address or bank/bankers card details etc) and subscription fees are paid on time. Any lapse in subscription resulting from them not updating information or paying fees on time will mean automatic updates on their criminal record status (and therefore portability) will cease. The only way to reinstate subscription is by carrying out a fresh DBS check which will have a cost implication for the employer and/or individual themselves, depending on the organisation’s local policy for the payment of checks.

Although the DBS automatically sends out notifications to alert individuals of subscription expiry dates, we would suggest that it would be in an employers’ best interest to ensure they have their own arrangements to prompt individuals to renew their subscription on time and to check that their account details are still correct. More detailed guidance about using the DBS update service and preventing lapses in subscription can be found on the NHS Employers website.

**Minimum requirements**

**Assessing eligibility for a check**

Not all positions in the NHS are eligible for a DBS check. Employers must ensure they are legally entitled to seek information about an individual’s criminal history before requiring workers and volunteers to have a DBS check.

The trigger for a DBS check and the level of check required is determined by the type of activities the individual in that role will be undertaking and the level of access this will allow them to have with patients.

Employers may find it helpful to refer to our interactive DBS eligibility tool which can be found on the NHS Employers website. The tool asks a series of questions to identify whether a position meets the criteria for a DBS check. It also provides scenario-based examples to demonstrate how different responsibilities can impact on the level of check required.

Further information can also be found in the DBS guide to eligibility available on the gov.uk website.

Links to the relevant pieces of legislation which permit or require employers to obtain a DBS check, can be found in appendix one.

**When to request a DBS check**

The requirement for a check is triggered when:

- the applicant has never had a DBS check before and the role they are applying for is eligible for a check
- the applicant is already employed by the organisation and they have had a DBS check for their current position, but they are now applying for a new role which requires a different level of check or barred list clearances
— concerns have subsequently been raised about an employee’s criminal activity or another form of malpractice which would mean there was a safeguarding/security need to obtain a new check.

Where a position is eligible, it is common place for employers to undertake a DBS check once the provisional offer of appointment has been made. It is important to make clear that any offer of appointment and/or contract of employment remains conditional until all satisfactory checks have been completed, including a DBS check.

The disclosure certificate will be sent directly to the individual the check relates to. Employers will therefore need to ask applicants to present their original copy of the disclosure certificate at the earliest opportunity, to reduce delays in them taking up appointment.

**Taking up a position before the check outcome is known**

Employers may, in exceptional circumstances, make a risk-based decision to allow individuals to take up their appointment before the outcome of their DBS check is known.

Exceptional circumstances include where individuals are required to complete a period of induction or training in advance of them starting in their role. Where practical, it may also include allowing individuals to start work or volunteer in a limited capacity, for example, restricting duties to non-regulated activity until the outcome of the check is known.

If recruiting into a regulated activity with adults, employers may wish to consider whether it would be appropriate to conduct a DBS Adult First check (see guidance on page six).

**Existing staff changing roles within the same organisation**

If an existing member of staff has had a DBS check for their current position and they apply for another role within the same organisation which has the same or similar responsibilities, then a new check is not normally required.

A new check will always be required if the member of staff is moving to a new position which requires a different level of check or clearances against a different barred list.

Employers should make it clear to all staff that they have a duty under the NHS Terms and Conditions of Service to notify any organisation they are employed or volunteering with, if they subsequently become subject to any convictions, police cautions, conditional cautions or other similar offences, at any point during their term of appointment. It may be in an employers’ best interest to outline similar requirements for volunteers or temporary/contracted workers.
Students

Students undertaking vocational placements as part of a professional qualification are likely to be eligible for a DBS check. The NHS organisation offering that placement will need to determine the level of check required based on the activities the individual will be required to undertake and the risks associated with those responsibilities.

NHS organisations may require the educational establishment to conduct the check, where a training placement has been arranged and the applicant has been provisionally accepted. Where doing so, they must seek written assurances that the educational establishment has carried out an appropriate check at the correct level. Where the necessary assurances cannot be provided, the NHS organisation may require a new check either by obtaining one themselves or requiring the educational institution to obtain one.

Work placement/experience

The Protection of Freedoms Act 2012 legislates that DBS checks must only be conducted on individuals who are aged 16 or over. Where considering offering work placements/experience to individuals under the age of 16, the host employer should rely on other sources of evidence gained through their check process to assess a young person's suitability.

Eligibility for a DBS check for those aged 16 and over will need to be based on the type of duties individuals will be undertaking while on placement and the level of access this will permit them to have with patients. Quite often, work placements are only for very short periods of time, therefore the host organisation may decide that it would not be practical or proportionate to seek a DBS check. In such cases, the reasons for not carrying out a DBS check must be recorded and retained on file and appropriate safeguards put in place to manage that individual.

Individuals on work placements/experience should not be permitted to undertake a regulated activity. Observing clinical practice is not in itself a regulated activity and therefore there should be no requirement for employers to conduct an enhanced check with barred list information. The host organisation may, however, wish to consider whether their duties and/or level of contact with patients may fall eligible for a basic, standard or enhanced without barred list check.

In all cases, employers must ensure that all individuals invited to carry out a work placement/experience are:

- suitably supervised for the full term of their stay within the organisation
- only permitted to carry out duties which are appropriate to their level of knowledge, skills and experience.

Informing applicants about check requirements

Employers must be able to demonstrate that they are only asking for information that is strictly necessary for them to gain assurance of an individual’s suitability for the role they are recruiting to. This is of utmost importance to ensure
compliance with the Data Protection Act 2018 and the General Data Protection Regulation 2018 (GDPR).

Any requirement for a DBS check must be made clear in the job description, advert and any other correspondence relating to an offer of an appointment. This is to ensure applicants understand what information may be sought about them as part of the recruitment process. Where recruiting to roles which involve a regulated activity, information should also include any automatic exclusions that apply to individuals who appear on one or both barred lists. Making this expressly clear from the outset removes the need for applicants to go through a recruitment process unnecessarily only for their application to be rejected later down the line.

Providing information about your organisation’s policy on recruiting individuals who have a criminal record will be helpful to reassure applicants that any information they disclose will be considered fairly on a case-by-case basis. The DBS have provided a sample policy on recruiting ex-offenders which employers may wish to consider adopting for this purpose.

Providing applicants with a point of contact with the recruiting manager will be useful in case they have any questions about the process. Advising them where they can seek further independent and confidential advice about what they need to declare to a prospective employer and their rights when doing so, is also important in case they have any questions or concerns. This may include charity bodies such as Nacro or Unlock who provide practical and specialist advice to individuals who may have a criminal record.

If information about an applicant’s criminal record is discussed verbally, we would recommend that this is carefully recorded and stored separately and securely on the applicant’s file in line with GDPR guidelines. This is in case of any challenge about the recruitment process or final recruitment decision is raised later down the line.

Reducing delays in processing applications

Making applications and processing criminal record information can be time consuming. Employers will need to ensure that they factor in adequate time for this in their recruitment processes.

Making use of the DBS e-bulk system for disclosure applications

If regularly submitting multiple applications to the DBS, employers may wish to consider using the online electronic service (e-Bulk). This can speed up the checking process, improving an employers’ ability to make timely appointments, and reduces the need for any unnecessary agency spend to backfill vacant positions. Further information about how to register and use the e-bulk service can be found on the DBS website.

Ensuring DBS application forms are completed correctly

When completing the disclosure application form, employers must clearly indicate which workforce the individual will be working or volunteering with (for
example, adults, children, or adults and children). This is to ensure that local police forces include all relevant information that may need to be considered against the role being offered.

The counter signatory must ensure that all application forms are completed correctly to avoid any unnecessary delays in the DBS’ ability to process information in a timely manner. See further guidance on completing disclosure application forms on the gov.uk website.

Portability

The DBS defines portability as meaning the reuse of a disclosure certificate which has been obtained for a position in one organisation and is later used for another position in different organisation.

Disclosure certificates have no specific term of validity unless individuals choose to subscribe to the DBS Update Service, as described earlier in this document.

If accepting a disclosure certificate that has been issued for another role and where the individual is not subscribed to the Update Service, employers will need to consider the following.

— The date of the last disclosure. The disclosure certificate will only include information that is known about an individual up to the point of its issue. Employers will need to consider the time that’s lapsed since the last disclosure and balance this against any risks of the individual’s criminal record status changing since their last disclosure.

— Whether the new role is the same, or similar to their previous role. Any information included in the disclosure certificate will have been relevant to the individual’s previous role. If the role is significantly different either in responsibilities or in the type or level of contact with patients, then additional information may be revealed in a new check.

— Whether the certificate is genuine and relates to the person presenting themselves. The previous disclosure will have been issued based on another organisation’s ID verification process. The new employing organisation should take all necessary steps to assure itself that the certificate is genuine, the information provided relates to the individual presenting themselves, and it can be cross-referenced with other documentary evidence they have provided in support of their application.

Verifying pre-disclosed information

Employers can verify pre-disclosed information in a variety of ways:

— electronic transfer of data (through ESR or, another relevant internal HR/personnel system)
— obtaining a hard copy of the previously issued certificate from the applicant
— verification by the previous employer via confirmation of employment
— by carrying out online status check using the DBS update service (if the applicant declares that they have subscribed to this service).

**Periodic and retrospective checks**

Employers are not legally required to obtain periodic or retrospective\(^3\) checks. There are, however, a number of nationally agreed easements which are intended to help employers to more proportionately mitigate any risks associated with positions that require individuals to be highly mobile. The easements outlined below may be considered where workers are not subscribed to the DBS Update Service.

Employers have the discretion to introduce a local policy which includes periodic checks for a wider range of professions than those outlined below. Any decision to do so must be proportionate to risk. The frequency for periodic checks is something employers may define locally.

**Easements**

Although legislation does not explicitly refer to employers relying on checks completed by another organisation, it is considered reasonable that employers cooperate in sharing any relevant information to help reduce the risk of appointing someone who is unsuitable or barred from working in certain roles.

The easements outlined in this section are intended to help employers manage risk in an appropriate and proportionate manner, removing the need for more frequent and unnecessary checks each and every time an individual works in a different department or organisation as part of normal contractual arrangements.

**Working with trade unions**

We would strongly recommend that any changes to current practice regarding requiring repeat checks be considered and implemented in partnership with local trade unions. Seeking legal advice will also be important to ensure you remain compliant with requirements under the DBS regime and GDPR. Engagement with your organisation’s communications team will also be helpful to ensure changes are clearly communicated to all workers and they have adequate time to consider the impact and/or to ask questions and seek advice.

**Temporary workers and contractors**

Not all temporary workers and contractors are eligible for DBS checks. Employers should clearly outline the type and level of checks required for different NHS positions in any contractual agreement they may have with staffing providers, including agencies and other external contractors.

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\(^3\) A retrospective check refers to checking existing staff who are in eligible positions but who have never had a DBS check. This is because they were appointed prior to the requirement becoming mandatory in the NHS (2002) and they have remained in the same job so the normal trigger for a check has not been triggered.
Where individuals are not subscribed to the Update Service, there should be a condition which requires any eligible workers to have an annual DBS check as a minimum requirement. Employers must seek written confirmation from the staffing provider that the worker they are supplying has got all the necessary clearances to undertake the role they are being appointed to do, and there is no known information about them that may call their suitability into question.

If the worker is registered with NHS Professionals to carry out additional temporary work while also holding a substantive post in the NHS, there is no requirement for an annual DBS check, but assurances should be sought from their substantive employer to confirm that all necessary checks were undertaken when they were first appointed. A new DBS check must always be obtained if the individual subsequently leaves their substantive post or has had a break in service for a continuous period of three months or more immediately prior to them registering as a temporary worker with NHS Professionals.

Employers may require additional checks to be undertaken where the necessary assurances cannot be provided or where concerns have been raised about a worker’s suitability. Additional checks may be undertaken by the employing organisation or this can be required of the staffing provider, depending on contractual arrangements set in place.

Further information about how to ensure you meet compliance with the employment check requirements for agency workers and contractors can be found on the NHS Employers website.

**Doctors in training**

Doctors on educationally-approved training rotations should be regarded as being in continuous employment for the full term of their training programme.

Trainee doctors who are not subscribed to the Update Service must have a DBS check at least once every three-years. Employing organisations will need to seek written confirmation that a DBS check has been obtained within the preceding three-year period and it is at the correct level for the role they will be undertaking.

Where considering requiring individuals to subscribe to the Update Service as an alternative to three-yearly checks, we would suggest that this is done when individuals first start their foundation training. For those already on a training programme, any new requirement to subscribe to the Update Service should be prompted when their three-yearly check is next due to expire. Employers should not require doctors to have a new check simply to subscribe to the Update Service if their three-yearly check is still valid.

**Using an external agency to carry out DBS checks**

In cases where the responsibility for carrying out checks has been delegated to an external agency registered with the DBS (known as an umbrella body) the employing organisation will need to seek written assurances of the outcome of any checks it carries out on their behalf.
If the disclosure comes back clear (that is, if it confirms that the individual does not have any criminal convictions, cautions or other similar offences, then the employer can accept written confirmation from that agency that this is the case, without the need to see the original disclosure certificate.

If the outcome of the check reveals that relevant information is known and information needs to be considered, employers should either ask the candidate to present their original disclosure certificate or ask the umbrella body to provide a scanned copy of the disclosure certificate so that they can consider any information that might be relevant to determine the individual’s suitability for a particular role.

Other types of check

Seeking a self-declaration

Seeking a self-declaration can be useful to ensure applicants have a greater understanding about the type of information that will be requested about them and considered as part of the recruitment process. It also gives applicants an opportunity to identify any additional information or evidence that they may wish to be considered in support of their application.

For this purpose, we have produced two model declaration forms which outline a range of questions employers are legally entitled to ask of applicants, including information about criminal records, registration with professional bodies and fitness to practise, as may be appropriate to the role being appointed to. They also include questions about issues relating to conduct or behaviour in circumstances that may be relevant to consider in a work-related setting.

Employers may use the model declaration forms or adapt their own organisational forms to include the questions outlined. The forms are periodically reviewed to ensure they remain compliant with legal requirements under the DBS regime, data protection, equality and human rights. It is therefore important for employers to ensure they refer to the NHS Employers website to ensure they are using the correct forms.

1. **Model declaration form A** should only be completed by applicants applying for NHS positions which are **exempt** from the Rehabilitation of Offenders Act 1974. Exempt positions are eligible for a **standard or enhanced DBS check** under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) or the Police Act 1997.

2. **Model declaration form B** should only be completed by applicants applying for NHS positions which are **non-exempt** from the Rehabilitation of Offenders Act 1974 and where there is discretion for an employer to require a basic disclosure in follow up to verify information.

Employers may find it useful to use the **online DBS eligibility tool** on the NHS Employers website, to help them determine whether a role is eligible for a basic, standard or enhanced DBS check.
Further guidance on seeking a self-declaration can also be downloaded from the NHS Employers website.

**Overseas police checks**

The requirement for an overseas police check can vary depending on where an applicant is being recruited from. These requirements are outlined in more detail on page 16.

Overseas police checks must be in accordance with the relevant country’s justice system. Some police authorities overseas will only provide a certificate of good conduct or standing. Where this is the case, employers may accept this as a valid police check. This should not be confused with a certificate of good standing issued by an overseas regulator, which is not equivalent to a police check. However, this may still be useful to help inform the overall assessment of suitability.

Any requirement for an overseas police check must be made clear to applicants as early on in the recruitment process as possible with additional time factored to receive this information. Wherever possible, employers may find it useful to ask applicants to obtain a police check before they leave their residing country to avoid any unnecessary delays to appointing them.

Further guidance about how individuals can apply for an overseas police check, including the cost of a check and anticipated processing times can be found on the Home Office website.

Any overseas police certificates should be verified in the exact same way as all other official documentary evidence to ensure they are legitimate and relate to the person presenting themselves. If employers are unsure of the authenticity of the documents, they should contact the relevant country’s embassy in the UK for advice.

**Non-EEA applicants (Tier 1 and Tier 2 routes)**

All non-EEA applicants coming through Tier 1 and Tier 2 routes must provide a police certificate in order for their visa application to be processed. This applies to any non-EEA country or countries the individual has resided in for 12 months or more (whether continuously or in total) in the last 10 years, while aged 18 or over.

For visa purposes, the Home Office will accept a photocopy or scanned copy of the original police certificate. However, employers should make it clear to the applicant that they will need to present their original certificate for employment checking purposes.

**EEA applicants**

Employers should ask for an overseas police certificate or equivalent for all EEA nationals applying for positions in the UK. This applies to any EEA country or countries the individual has resided in for six months or more (whether
continuously or in total) in the last five years, while aged 18 or over.

This process may be subject to change once the UK leaves the EU. We will work closely with the Home Office to ensure any changes are clearly understood and can be implemented in a timely and effective manner. Further updates will be communicated through the NHS Employers website and the NHS Workforce Bulletin.

EEA and non-EEA nationals

Employers are recommended to consider undertaking a relevant DBS check on EEA and non-EEA nationals, in addition to the overseas police check to assure themselves that:

— the person is not barred from working with children and/or adults, as may be relevant to the role
— they do not hold a criminal record in the UK.

In some cases, the DBS may have information sharing arrangements with the applicant’s residing country and therefore this may help to validate information provided in their overseas police certificate or certificate of good standing or provide new information which must be considered.

We would recommend that any DBS check is obtained as soon as is practical i.e. when the individual can be reasonably expected to meet the requirements outlined in the DBS identity checking guidelines in order for the DBS to process the disclosure application.

UK applicants (time spent overseas)

Employers should also obtain an overseas police certificate from any UK applicant where they have declared that they have spent a significant period of time overseas within the last five years. We would suggest that a significant period of time should be considered as any period of six months or more (whether continuously or in total) within the last five years.

Unable to obtain an overseas police check

Not all countries have reciprocal arrangements to share information about a person’s criminal record history for employment purposes. If the country concerned is not listed in Home Office guidance, employers should instruct individuals to contact their country’s embassy or consulate, to seek further advice about what to do. Contact details can be found on the gov.uk website.

Where it is genuinely not possible to obtain an overseas police check or equivalent because procedures for issuing certificates do not exist, employers will need to base their recruitment decision on the wider range of evidence presented to them as part of the recruitment process.

Military and ex-military personnel
If applicants declare a period spent abroad because of serving in the armed forces, employers can ask them to present an extract from their military service record. This information can be accepted instead of an overseas police certificate or a DBS check.

The extract should disclose any convictions or cautions that the applicant may have been charged while serving in the UK or any other country where the offence would be considered the same. The extract must be original and issued by and verified through the force they were serving with.

It is important to note that some criminal convictions and cautions that apply under military service law may not be considered as such under civilian law and therefore employers will need to take a proportionate approach when considering any such information.

Convictions and cautions relating to criminal conduct while serving in the armed forces are recorded on the Police National Computer (PNC) so any such information will be included in a DBS check, if the employer was to undertake one, and the individual’s military service record. This includes any convictions or cautions that have been committed outside the UK where they would also be considered a criminal offence under English law.

Serious convictions for disciplinary offences (non-criminal conduct) would also be recorded on the PNC. This is more likely to include disciplinary action taken against the individual because they have demonstrated certain behaviours which would be considered a crime under military law but would not be considered as such in civilian life. Employers should not consider this type of information in the same way as they would a conviction or a caution. If the offence for non-criminal behaviour is relevant to the position being appointed to, employers may wish to consider this as part of their wider assessment of suitability for the role in question. Further information about what constitutes a disciplinary offence under military law can be found in Schedule 1 of the Police and Criminal Evidence Act (Armed Forces) Order 1984 (Recordable Service Offences) Act 2009 which is available on the legislation.gov.uk website.

An individual’s military record may also include other minor offences for non-criminal disciplinary conduct. This relates to offences which are not included in Schedule 1 of the Police and Criminal Evidence Act which are very specific to military life. Employers may wish to consider repeated behaviour which may cause concerns in civilian life but may otherwise disregard this information.

Dealing with a positive disclosure

Having a criminal record does not automatically mean an applicant cannot be considered for a position in the NHS.

The decision to recruit a person whose criminal record check reveals a conviction, caution or other relevant information always rests with the employing organisation. This information should be carefully considered on a case-by-case basis and assessed against what other information the applicant has presented during the application, interview and employment check process. Taking this
approach is important to ensure you do not unfairly rule out individuals who are the best candidate for the role, meet all other necessary check criteria, and no risks have been identified against the duties they would be required to perform.

If the DBS disclosure certificate simply reaffirms what the applicant has already disclosed to you and you have already considered this information, then you may issue an unconditional offer of employment.

If the recruitment decision rests with HR or another senior member of staff, then you should ensure the decision maker has access to any information that is relevant to the role being appointed to, so that they can make a fair and balanced decision. This may include the applicant’s self-disclosure and any supplementary information they may have provided to support their application.

If the DBS check reveals information that you weren’t expecting or is conflicting with what the applicant has disclosed, then further consideration may be necessary to ascertain as to why.

**Assessing criminal record information**

In all cases, a DBS disclosure will only provide the basic facts about the date of a conviction or other offence, the offence committed, the court, and the sentence or disposal. It will not provide any information about the circumstances surrounding the offence.

Employers will need to carefully consider the situation before offering any form of appointment to an individual who is:

- on probation (in a legal sense)
- under a suspended prison sentence
- released from prison on parole
- still under a conditional discharge
- subject to Terrorism Prevention and Investigation Measures.

Any risk assessment should carefully consider the individual’s skills, experience and ability to do the type of role being offered against the offences disclosed, taking into account the following points.

- **The relevancy of any offences to the role being appointed to.** It is essential that any assessment considers offences that are relevant to the nature of the role and where there may be ongoing concerns about the individual’s conduct or behaviour.

- **Any legal or regulatory requirements.** For example, where appointing to a regulated activity, you must not allow a person to engage with vulnerable groups (adults, children or both adults and children) where the DBS have made a barring decision which would prevent them from working or volunteering with that specific group or groups.

- **The nature and seriousness of the offence(s).** This is important because all offence codes cover a broad range of crimes that significantly vary in terms of seriousness.
— **The age of the applicant at the time of the offence(s).** Crimes that date back to when the person was growing up may not be relevant because applicants have put their past behind them.

— **If there is a repeat or pattern of offending behaviour.** Patterns of offending behaviour or repeated allegations may indicate that they have not put their offending behind them.

— **The circumstances surrounding the offending behaviour and the explanation offered by the individual.** Consideration should be given to any change in the applicant’s circumstances since the offence/s or took place. For instance, those who were convicted when they were young, often do not reoffend once they have family or financial responsibilities. It may be helpful to reflect on the applicant’s attitude at the time of the offence and now.

— **Any life experiences they may have had since the offending behaviour to evidence their rehabilitation.** Many people reach a point where they want to put their offending behind them and can demonstrate how they have put their talents to more constructive use. For example, volunteering activities or work in the community they have undertaken, or evidence they can provide which demonstrates a change in their home and personal circumstances.

Any discussions at interview should be handled sensitively. The purpose of the interview is to gather information from the applicant to assess whether they may pose an ongoing risk if appointed to the position being offered. Employers may find it useful to refer to our positive disclosure discussion guide which is intended to help recruiting managers follow best practice when having a conversation with an applicant who declares something on their criminal record.

Employers should in all cases, balance the risks associated with a criminal offence with the wider range of information obtained at the application, interview and pre-employment checking stage before making their final recruitment decision.

All discussions must be recorded on file, alongside clear reasons reached to appoint or reject the applicant. Information should be stored securely in line with the DBS code of practice and in accordance with data protection and GDPR requirements.

Information about an applicant’s criminal record should not be disclosed to anyone other than those who have a legitimate reason to know. This may include people directly responsible for the recruitment decision or the applicant’s line manager, if the offence has a bearing on their suitability to continue in their current role.

Employers will need to be mindful of changes that are likely to come into effect following a Supreme Court ruling in January 2019 which stated that the disclosure of reprimands, warnings and conditional youth cautions was ‘an error in principle’ as these disposals were intended as rehabilitative and not for punishment. Further information about the Supreme Court ruling and what this means for employers will be published on the NHS Employers website in due course (anticipated at the end of 2019).
Discrepancy in information provided

Firstly, you need to consider whether reasonable opportunity was given to enable the applicant to make a self-disclosure at the time of their appointment. There is no legal duty for applicants to provide information if they are not specifically asked to do so by an employing organisation. The model declaration forms referred to earlier in this document will help you to ask the right questions, at the right time and seek confirmation that individuals have understood what information is required of them, or have taken opportunity to seek advice, if that is not the case.

If there are significant discrepancies between the information the applicant has provided and that contained in any subsequent DBS check, it is important for the employing organisation to establish why this might be the case. The DBS code of practice states that an employer should conduct a meeting to discuss any new matters including other relevant information revealed in the DBS check with the applicant in a face to face meeting, prior to making a final recruitment decision. Any discussion must be handled sensitively and fairly without pre-judgement.

Given the complexity of the criminal justice system, it is easy for applicants to misunderstand what offences might be on a criminal record or the implications of those when applying for employment until a DBS check is conducted.

If it becomes clear from the additional information provided that the individual is unsuitable for the role being offered, then the employer will need to follow the organisations local policy on managing the withdrawal of an offer of appointment in consultation with the HR department.

In cases of serious misdirection, for example, if the applicant is applying for a position which involves a regulated activity from which they are barred, the employing organisation has a legal duty to make a referral to the DBS.

Legal duties to refer to the DBS

If you employed or engaged a person to work or volunteer in a regulated activity, you have a legal duty to refer to DBS where certain conditions are met. This includes where the worker has been supplied by a third-party staffing provider, for example, an agency or contractor.

The duty to refer also applies even when a report has already been made to another body, such as a professional regulatory or licensing body. This helps the DBS to make sure they have all the relevant information to fully consider a case and, decide whether or not the individual needs to be added to one or both the children’s and adults barred lists.

A person/organisation that does not make a referral when the legal duty conditions are met will be committing an offence and, if convicted, may be subject to a fine of up to £5,000.

We have produced further guidance on an employer’s duty to refer in partnership with the DBS which can be found on the NHS Employers website.
If you are still unsure of your duties or how to make referral, further advice can be obtained by calling the DBS helpline on 03000 0200 190.

**Storage, retention and disposal of records**

DBS disclosure certificates contain sensitive personal data and therefore employers must comply with the Data Protection Act 2018 (as amended by the General Data Protection Regulation 2018) and the DBS code of practice. The code is designed to ensure that any criminal record information released is used fairly and is handled and stored appropriately.

Criminal record information must only be used for the specific purpose it was requested for, and with the applicant’s explicit consent. The following information should be recorded and retained on ESR.

- The issue date of the disclosure certificate.
- The level of check requested.
- The position it was requested for.
- Any checks against one or both barred lists.
- The unique reference number of the certificate.
- The decision to offer/withdraw the appointment.

The recruiting manager will be informed that the applicant/employee has been cleared to commence in post (subject to all other pre-employment checks).

Any photocopied or electronically scanned copies of the disclosure certificate and self-declaration forms should be stored in secure facilities with strictly controlled access. Access should be limited to persons who need to use this type of information in the course of their normal duties.

Once a decision has been made on whether to appoint or not, the disclosure certificate should be kept in line with the DBS code of practice and data protection laws. The DBS advise holding on to criminal record information for six months after the recruitment phase, to ensure resolution of any disputes or complaints. Queries about the retention of criminal record information can be directed to the DBS Data Protection Manager by emailing dataprotection@dbs.gsi.gov.uk.

**Checking authenticity of disclosure certificates**

Criminal record disclosure certificates contain a number of security features that can be used to verify whether a disclosure has been counterfeited or altered in any way.

The security features are:
— a 'crown seal' watermark repeated down the right-hand side of the disclosure, which is visible both on the surface and when holding the disclosure up to light
— a background design incorporating the word 'disclosure', which appears in a wave-like pattern across both sides of the document. The colour of this pattern is uniform across the front of the disclosure but alternates between pink and green on the reverse
— fluorescent inks and fibers that are visible under UV light
— ink and paper that will change colour in the presence of water or solvent-based liquid.

DBS notifications sent to an employer via the e-bulk service may be transcribed by the organisation in a letter format and will not be printed on DBS secure certificate paper.

If you are unsure whether a DBS certificate is genuine or if you think that it may have been altered, you should contact the DBS on 03000 200 190.
Appendix 1: Legislative drivers

This appendix provides a brief outline of the different pieces of legislation which underpin checks under the DBS regime.

Employers may obtain full versions of each piece of legislation from the UK legislation website.

Rehabilitation of Offenders Act 1974 (as amended in England and Wales)

Under the Rehabilitation of Offenders Act 1974 convictions, cautions, reprimands and final warnings can become spent after a specified period (known as the rehabilitation period). Rehabilitation periods vary depending on the sentence or order imposed by the court, not the actual offence.

Once a conviction or caution becomes spent (old) the ex-offender is not normally legally required to declare this information when applying for the majority of jobs, volunteering activities, and education or training courses. However, to protect the vulnerable, certain professions within health, social care, and other sectors are exempt from these provisions under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended).

Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in England and Wales)

The Exceptions Order lists specific positions, professions, employment, offices, works and licences which are exempt from the provisions defined by Rehabilitation of Offenders Act.

This means that employers appointing individuals into any of the listed positions or professions are legally entitled to ask applicants to declare all spent and unspent convictions, cautions, reprimands and final warnings which are not protected by the DBS filtering rules and to take these into account as part of their recruitment process.

DBS filtering rules

The DBS filtering rules were introduced on 29 May 2013 under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) 2013. From this date, certain spent or minor convictions and cautions are now protected (or filtered out) when certain conditions are met, and they will never appear in a DBS disclosure certificate. Employers must be careful to ensure that they do not inadvertently ask for or, consider information which falls under the DBS filtering rules and use this to make a recruitment or employment decision. Key considerations for employers can be found in appendix three.

Legal Aid, Sentencing and Punishment of Offenders Act 2012

On 10 March 2014, changes to the Rehabilitation of Offenders Act came into effect in England and Wales under Section 139 of the Legal Aid and Sentencing and
Punishment of Offenders Act 2012 (LASPO). These changes impact on the period that needs to elapse before a conviction or caution can be considered spent.

Employers should ensure they are only asking applicants for information that they are legally permitted to seek. This is particularly relevant where recruiting to positions which are eligible for a basic disclosure (which requires individuals to declare unspent convictions only).

**Police Act 1997 (as amended)**

The Police Act 1997 (as amended in England and Wales) permits employers to obtain information about an applicant’s spent convictions and cautions by requesting a standard or enhanced disclosure through the Disclosure and Barring Service (DBS).

Section 123 of Part V of the Act makes it a criminal offence for employers to require a standard or enhanced disclosure when considering appointments to positions which are not exempt (included in the Rehabilitation of Offenders Act (Exceptions) Order).

Further information about the different types of DBS check and eligibility can be found on earlier in this standard.

**Police Act 1997 (Criminal Records) (Amendment) Regulations 2013**

The regulations outline when an enhanced criminal record certificate may be requested, including assessing a person’s suitability to work with adults and children by obtaining information against the barred lists.

**Part V of the Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2013**

Changes to the Police Act were introduced in England and Wales on 29 May 2013 amending the definition of ‘relevant matters’.

Relevant matters specifically refer to information that is not protected by the DBS filtering rules, and police forces can include when responding to a request for information through a standard or enhanced DBS disclosure. This is because of the potential risk to the vulnerable, and where disclosing this information may add relevant contextual or background to a conviction or a caution which might be invaluable to an employer when they are considering applicants for specific roles.

**Safeguarding Vulnerable Groups Act 2006**

The Safeguarding Vulnerable Groups Act 2006 was created in direct response to recommendations made in the Bichard Inquiry into the Soham murders in 2002. The inquiry questioned the way organisations recruited people to work with vulnerable groups and the way background checks were carried out.

The Act provided the legal basis for setting up the Independent Safeguarding Authority (which was superseded by the Disclosure and Barring Service in 2012) and laid the original foundations for the Vetting and Barring Scheme (VBS). It set
out the type of work and activities that a person who has been barred must not do, known as regulated activities.

**Changes under the Protection of Freedoms Act 2012**

The Protection of Freedoms Act came into force in 2012 following a review into the criminal record system which was led by the independent government adviser, Sunita Mason.

The following provisions were enforced under the Act:

- The establishment of the Disclosure and Barring Service (DBS) merging the functions of the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA).
- The introduction of a new definition of regulated activity reducing the scope of eligibility for enhanced checks with barred list information.
- The launch of the DBS update service which allows the portability of disclosure certificates where individuals are subscribed to the service.
- The introduction of a single DBS disclosure certificate which is only issued to the applicant to whom the information relates. Employer certificates are no longer issued as the norm.
- A stipulation that criminal record checks can only be obtained for individuals aged 16 years or over.
- The introduction of a more rigorous relevancy test which police forces need to apply when deciding whether to include non-conviction information in response to a disclosure request. This does not impact on their common law powers to share information where it is regarded necessary for safeguarding the most vulnerable.
- Removal of the requirement for police forces to disclose additional information about applicants separately (known as ‘brown envelope’ information).
- A new representation process for individuals providing the opportunity for them to challenge inaccurate information contained in their disclosure certificate.

**Data Protection Act 1998**

On 10 March 2015 Section 56 of the Data Protection Act 1998 was fully implemented. This amendment was specifically put in place to prevent the misuse of Subject Access Requests (SARs).

From this date it became unlawful for an employer to require an applicant or existing member of staff (including workers supplied through an agency or contractor) to obtain a copy of their full criminal record directly from the police, probation service or courts by using their ‘subject access’ rights under the Data Protection Act, and then share it with them. This is known as an enforced subject access request. Any employer in England or Wales who carries out an enforced subject access request may now face prosecution by the Information Commissioners Office (ICO).
Employers in England and Wales must only request this information through a standard or enhanced disclosure via the DBS or a basic disclosure through Disclosure Scotland.

**Changes to data protection from 2018**

Employers will need to be aware of the changes which came into effect from 25 May 2018 under the General Data Protection Regulation (GDPR). The Regulation brought in a number of significant changes to how organisations collect, handle and store information about staff as well as patients. Further guidance can be found in the changes to data protection requirements under GDPR factsheet on the NHS Employers website which outlines some key considerations for human resources.

More detailed guidance can be found on the [ICO website](https://ico.org.uk).
Appendix 2: Eligibility for an enhanced without barred list check

In the absence of government guidance, this appendix provides information about Regulations 5B and 5C of the Police Act 1997 (Criminal Records) (Amendment) Regulations 2013 which work with adults and work with children. Although legislation uses the term ‘work’, we would advise that this refers to any form of employment or volunteering activities which meet the criteria as set out below.

Employers may find it useful to refer to the online eligibility tool on the NHS Employer’s website which provides scenario based examples to demonstrate eligibility for this level of check.

Employers must always refer to the full copy of the Police Act which can be found on the UK legislation website to ascertain whether there might be other roles and activities which need to be considered for enhanced check without barred list information. Further guidance about eligibility can be found on the DBS website.

Work with adults

The type of activities which will be eligible for an enhanced check without barred list information are provided in the sections below. These activities must be carried out wholly or mainly for adults in receipt of a health and social care service or a specified service – see definitions below.

Definition of ‘in receipt of a health or social care service’

The following adults would be in receipt of a health or social care service:

1. those living in residential or nursing care
2. those living in accommodation provided because they are/have been, attending a residential special school (includes independent schools that specialise in providing education for pupils with special educational needs; further education institutions and 16-19 academies that provide accommodation for young people)
3. those living in sheltered accommodation
4. those receiving domiciliary care
5. those receiving any form of care (excludes personal care), treatment, therapy or palliative care – for example as a hospital patient
6. those receiving support, assistance or advice to help them to be able to live independently or continue to live independently
7. those receiving any service specifically provided for adults because of their age, disability, physical or mental illness (excludes services provided because the adult has - Alexia, an Auditory Processing Disorder, Dyslexia, Dyscalculia, Dyspraxia, Dysgraphia, or Irlen Syndrome)
8. those receiving a service provided to pregnant or nursing mothers who are living in residential accommodation.
Individuals carrying out one or more of the following activities with adults in receipt of a health or social care service, or a specified service will be eligible for an enhanced check without barred list information.

The activity must be carried out by the same person regularly.

1. Providing any form of care, supervision, treatment or therapy. Care in this context excludes the provision of ‘personal care’ which is a regulated activity and would therefore be eligible for an enhanced check with barred list information.

2. Providing any form of teaching, training, instruction, assistance, advice or guidance on their emotional or physical well-being.

3. Moderating a chat room (if the individual carrying out this activity interacts with adult users and has responsibility for monitoring, removing or preventing the addition of content, or controls access to the service).

4. Face-to-face contact with adult residents in a care home.

5. Representing or providing advocacy on behalf of a statutory service and has contact with the adult.

**Regularly** is defined (unless otherwise specified) as when the activity is carried out:

- frequently, at least once a week on an on-going basis
- intensively, any time on more than four days in any 30-day period
- overnight, any time between 2am and 6am which gives the opportunity for the person to have contact with the adult.

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**Definition of ‘in receipt of a specified service’**

1. Those adults lawfully detained in:

   - a prison, remand centre, young offender institution, secure training centre, attendance centre
   - an immigration removal centre or short-term holding facility
   - under immigration escort arrangements.

2. Adults supervised by the National Probation Service for England and Wales.

3. Those adults who receive assistance with the conduct of their own affairs:

   - by virtue of a Lasting or Enduring Power of Attorney.
   - by virtue of an order from the Court of Protection.
   - from an Independent Mental Capacity Advocate.
   - from independent advocacy services.
   - from a representative who receives payments under regulations made under the Social Security Administration Act 1999.
   - in relation to payments made to them or to another person on their behalf: under arrangements made under section 57 of the Health and Social Care Act 2001, or under section 12A of the National Health Service Act 2006 or regulations made under that section.
6. Providing transportation wholly or mainly for adults and their carers to and from places where they will be receiving/or have received healthcare services. This excludes taxis which can be used by the general public.

7. People who have responsibility for carrying out inspection functions of a health, social care or specified service. For example, inspections carried out by the Care Quality Commission (CQC) and where any such inspection would permit the individual to have contact with adults who are in receipt of a health, social care, or specified service.

8. People who are specified office holders (see definition in the table below).

9. Employers may also wish to consider carrying out an enhanced check without barred list information for a wider range of activities where staff and volunteers are working in a high security psychiatric hospital such as Broadmoor, Rampton or Ashworth and where the role allows the individual to have direct face-to-face contact with adults, for example, maintenance workers, porters and domestics.

Employers must not require an enhanced check without barred list information on any of the above activities where they are carried out in the course of a family or personal relationship.

‘Family relationships’ are relationships between close family members (for example, parents, siblings, grandparents) and relationships between two people who live in the same household and treat each other as family.

‘Personal relationships’ are relationships between friends or family friends where no money changes hands, or any money that does change hands is not part of a commercial relationship (for example, gifting a friend money for petrol after they have driven you to the hospital).

Specified office holders are defined within legislation as:

— chief executives of local authorities that have any social service functions
— directors of adult social services in England or Directors of social services if there isn’t a dedicated adult social services director
— directors of social services of a local authority in Wales
— charity trustees of charities whose staff or volunteers are eligible for enhanced DBS checks because of their main duties
— people who have to register with the Care Quality Commission in order to provide a health or social care service, i.e. registered managers and service providers
— elected members of a local authority, members of the executive of a local authority or a member of any committee of the executive (including area committees and sub committees) who discharge social services functions which relate wholly or mainly to adults who receive a health or social care service or a specified activity.
Work with children

Work with children includes anyone who is working or volunteering in a supervised capacity with children in a specified role or specified place. Statutory guidance on supervision can be found on the DBS section of the gov.uk website.

The activity with children must be carried out by the same person regularly.

Specific child-related roles that are eligible for an enhanced check without barred list information are listed below. These activities must involve supervised access to children.

1. Providing any form of care, supervision, treatment, therapy. Care in this context excludes the provision of ‘personal care’ which is a regulated activity and would therefore be eligible for an enhanced check with barred list information.

2. Providing any form of teaching, training, instruction, assistance, advice or guidance on their emotional or physical well-being.

3. Moderating a chat room (when the individual carrying out this activity interacts with children who are users, and has responsibility for monitoring, removing or preventing the addition of content, or controls access to the service).

4. Providing transportation of wholly or mainly for children and their carers or guardians to and from places where they will be receiving/or have received health care services. This excludes taxis which can be contacted and used by the general public.

Work with children also includes people who have regular day to day management or supervision of individuals carrying out the activities as described above.

Specified places include work or volunteering for a limited to a range of establishments including: an educational institution (for example, school or further education institution for persons under the age of 18), a pupil referral unit, a nursery, children’s hospital, children’s detention centre (for example, prison or remand centre), a children’s home, childcare premises, or a children’s care home.

Workers or volunteers employed in an unsupervised capacity in a specified role or specified place will be in regulated activity and therefore will be eligible for an enhanced check with children’s barred list information.
Appendix 3: Filtering rules

This appendix outlines a number of changes which were introduced from 29 May 2013 under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013.

These changes came into force following a Supreme Court judgment in 2013 that found the Police Act 1997 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 to be incompatible with a person’s right to protect their private life under Article 8 of the European Convention on Human Rights.

How it works

Filtering is similar in its concept to the rehabilitation periods under the Rehabilitation of Offenders Act. However, instead of establishing what information should become spent after a specified period of time, filtering establishes the type of criminal record information that will become protected (i.e. subject to filtering) and therefore will not be included in a standard or enhanced disclosure certificate.

The change does not mean that information will be removed from the Police National Computer (PNC) and police forces continue to retain their common law powers to include information in the disclosure certificate where they reasonably believe it to be relevant to do so in order to protect vulnerable groups.

Under the filtering rules

— Applicants no longer need to declare any cautions or convictions that are protected, irrespective as to whether they are intending to engage in regulated activity.
— It is unlawful for an employer to take protected cautions and convictions into account when making a decision to employ a person or dismiss an existing employee.

What it applies to

For adults (persons aged 18 or over at the time of the offence)

An adult conviction will be removed from a DBS check only when it meets the following four conditions.

1. Eleven years have elapsed since the date of the conviction.
2. It is the person’s only conviction (multiple convictions will always be included).
3. The conviction did not result in a custodial or suspended sentence (any conviction resulting in a custodial or suspended sentence will always be included).
4. The conviction does not appear on the list of specified offences relevant to safeguarding.
An adult caution (including reprimands and final warnings) will be removed after six years have elapsed since the date of the caution and if it does not appear on the list of specified offences. There is no limit to the amount of cautions that can be filtered.

**For juveniles (persons under the age of 18 at the time of the offence)**

A juvenile conviction will be removed from a DBS check only when it meets the following four conditions.

1. Five and a half years have elapsed since the date of conviction.
2. It is the person’s only conviction (multiple convictions will always be included).
3. The conviction did not result in a custodial or suspended sentence (any conviction resulting in a custodial or suspended sentence will always be included).
4. The conviction does not appear on the list of specified offences relevant to safeguarding.

A youth caution (including reprimands and final warnings) will be removed after two years have elapsed since the date of the caution and if it does not appear on the list of specified offences. Again, there is no limit to the amount of cautions that can be filtered.

The DBS have provided guidance outlining the type of criminal offences which would never be filtered from a disclosure certificate.

**What this means for employers**

Employers will need to ensure they regularly review their policies and recruitment processes to ensure they are not asking applicants for information they are not legally entitled to. This includes any information they may require as part of a request for a self-disclosure, application form, or during the interview process.

We have revised our model declaration forms to ensure applicants can make a more informed decision about what they need to declare to a prospective employer. We have also included links to further sources of information, if they are still unsure about what they need to declare or if they have any queries.