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CRIMINAL RECORD CHECKS

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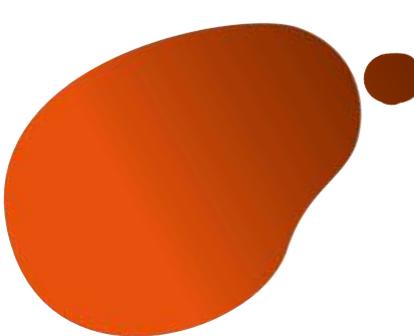
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INTRODUCTION

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 offences including convictions, conditional cautions and youth conditional cautions (formerly known as final warnings and reprimands). It may also include traffic offences such as 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, charges pending and even charges of which the individual has been acquitted.

Importance of a criminal record check

Carrying out criminal record checks helps employers ensure, as far as possible, that unsuitable people are prevented from entering the workforce and accessing adults and children who are considered at their most vulnerable because of a certain set of circumstances (for example, they are accessing and/or receiving health or care services).

Such a check is, however, only one part of the recruitment process. Employers must ensure that any recruitment decision is made based on what information a criminal record check presents, balanced against other evidence they may have gathered as part of recruitment process. Only where employers take this type of holistic approach can they ensure fair, safe and effective recruitment practice.

Where can I 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 appropriate service for their geographical area. All three agencies have access to the same type of data and have reciprocal arrangements in place to share relevant criminal record information across the borders, where appropriate.

Given that this standard covers criminal record check requirements in England only, we focus more specifically on services provided by the Disclosure and Barring Service.

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 type of check has different eligibility criteria and provides varying levels of information, as outlined in the sections below. Understanding eligibility is critical to ensure you are not at risk of accessing information that you are not legally entitled to ask for and consider as part of your recruitment process.

Basic disclosure

A basic disclosure is available to anyone who is aged 16 or over and is living and working in England and Wales, including employers, individuals and the self-employed.

This level of check only contains details of convictions that remain unspent, it may also include information about conditional cautions or conditional youth cautions. Conditional cautions are not a form of punishment but are rather issued as a means of handling less serious offences or first offences which the Court considers reasonable to be dealt with by placing conditions of restorative rehabilitation. A basic disclosure may also include any unspent convictions and cautions committed in Scotland and Northern Ireland, where this would normally be regarded as an offence under English law.

To be eligible for a basic disclosure, the position must be identified as a non-exempt position under the Rehabilitation of Offenders Act 1974. These protections are intended to give those who have committed criminal offences in the past, the opportunity to wipe the slate clean and start afresh under certain circumstances. Under the Act, convictions and cautions become spent after a specified rehabilitation period and do not need to be declared to an employer when applying for non-exempt positions.

This level of check is not a legal requirement in the NHS, therefore it is down to individual employers to decide as to whether they want to require such a check. We would recommend that basic disclosures only be considered for roles which are not eligible for a standard or enhanced check but nonetheless involve a high-level of responsibility, accountability or trust. This may include, but is not limited to, board level positions such as chief executives, certain director level and other senior management roles, for example, in finance where there is responsibility and accountability for the exchange of public monies.

From January 2018, basic disclosures should be obtained through the DBS. 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. Using the correct organisation when applying for a basic disclosure will be essential to ensure that the correct rehabilitation rules are applied. Rules in England and Wales differ from those in Scotland. If the

wrong rules are applied, employers may have access to information that they do not have a legal right to have.

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).

Where appointing to positions which are exempt, employers are permitted to ask for and consider criminal convictions, conditional cautions and conditional youth cautions (formerly reprimands and final warnings)¹ 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, positions being appointed to, must require the individual undertaking that role to be providing a health service which also allows them to have access² to patients as part of their normal duties.

We would advise that 'access' does not include positions where individuals have no more opportunity to contact and interact with patients than say 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 or when needing to pass through patient areas 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 identified as an exempt position as described above but must also be included in the Police Act 1997 (Criminal Records) (Amendment) Regulations 2013 as **work with adults** and/or **work with children**.

For ease of reference, we have provided 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. It will also include any other relevant information that is held on local police databases which a chief officer reasonably believes should be disclosed and considered by the 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

¹ In April 2012, the [Legal Aid and Sentencing and Punishment of Offenders Act 2012 \(LASPO\)](#) introduced youth cautions and youth conditional cautions to replace reprimands and final warnings.

lists, the position or activities must be listed as a regulated activity in the Safeguarding Vulnerable Groups Act 2006 as 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 refer to, when considering whether certain NHS roles meet eligibility 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 relevant to the position being appointed to.

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 engaging with. Individuals are also committing a criminal offence if they apply for or, engage in any form of regulated activity with the group(s) they are barred from working or volunteering with. Where such cases become evident, employers must be clear about their legal obligations to make a referral to the DBS. Further information about an employer's legal duty to refer can be found within this standard.

DBS Adult First service – regulated activity

The [Adult First service](#) enables employers to obtain a quick check against the adults barred list. This check does not remove the need to undertake a full enhanced disclosure but may be considered where any delay to recruitment is likely to have a significant impact on the provision of services and/or patient safety; for example, 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 supervision³ while waiting for their full enhanced disclosure to come through.

It is important to emphasise that the full enhanced disclosure may include additional information which is relevant to the position you have appointed to, and therefore will need to be considered before any unconditional offer can be confirmed. Employers must ensure that individuals understand that any appointment remains conditional until the full enhanced disclosure has been received, regardless of any quick check against the barred list.

³ 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.

There is no equivalent service to enable a quick check against the children's barred list. If recruiting to positions which involve regulated activity with children, employers must not allow individuals to start work until their full enhanced disclosure has been received.

DBS update service

The update service is something available for prospective and existing employees to subscribe to when they apply for a DBS check. The service enables portability of standard and enhanced disclosure certificates where individuals are changing roles and the new position does not change the level of check required or the workforce they are working or volunteering with, for example children, adults or both children and adults.

The service allows for a **subscribed person's** criminal record information to be regularly updated, enabling employers to manage risks more effectively where a worker's criminal record status changes.

The effectiveness of the service in enabling portability is reliant on individuals maintaining their subscription. Although the DBS system sends out two notifications to alert individuals of subscription expiry dates, we would stress that it is in an **employers' best interest to ensure arrangements are in place to prompt individuals to renew their subscription**. If an individual allows their subscription to lapse, employers will cease receiving automatic updates on their criminal record status and individuals will need a fresh DBS check in order to resubscribe.

Individuals may inadvertently allow their subscription to lapse for a range of reasons. This includes failing to pay their subscription fees on time, changes to bank cards or bank details, or changes to their name which means any updates to their criminal record status will not be recognised. Where employers actively encourage workers and volunteers to subscribe to the update service, it will be essential for them to provide information clearly outlining the importance for individuals to ensure account details are accurate and up to date. It should also be made clear that any lapse may incur additional costs to undertake a fresh DBS check, where there is a policy or legal requirement for one to be undertaken.

More detailed guidance about [using the DBS update service](#) 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 [eligibility tool](#) 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.

Information about the relevant pieces of legislation which permit or require employers to obtain a DBS check, can be found in [appendix one](#).

Further information can also be found in the [DBS guide to eligibility](#) available on the gov.uk website.

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 position they are applying for is eligible for such a check
- the applicant is an existing member of staff who has had a DBS check for their original role and they are moving into a new role which requires a different type of check and/or barred list clearances
- concerns have been raised about an employee's behaviour, conduct or practice (for example, because of criminal activity, actual harm or risk of harm to patients) which would trigger the need for a new check.

Where the position is eligible, it is common place for employers to undertake a DBS check once a provisional offer of appointment has been made. It is important to make clear that any offer of appointment and/or contract of employment is 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 recruitment.

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 volunteering but 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 using the DBS Adult First service would be appropriate, as outlined in that section.

Existing staff changing roles within the same organisation

If an existing member of staff has had a DBS check for an existing position and they apply for another job 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 another position which requires a different level of check or clearances against a different barred list.

It will be useful for employers to make clear to all staff, volunteers and other workers that they have a duty to notify any organisation they are employed or volunteering with, if they subsequently become subject to any convictions, police cautions, conditional cautions or youth conditional cautions (formerly known as reprimands or final warnings) at any point during their term of appointment.

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.

The check may be obtained by the educational establishment where a training placement has been arranged and the applicant has been provisionally accepted. The NHS organisation will need to obtain written assurance that the educational establishment has carried out an appropriate check at the correct level. Where assurances cannot be provided, the NHS organisation may require a new check.

Work placement/experience

The Protection of Freedoms Act 2012 stipulates that employers can only legally obtain a DBS check on individuals that are aged 16 and over. Where considering offering work placements/experience to individuals under the age of 16, the host employer will need to rely on other evidence of suitability provided as part of their check process.

For individuals aged 16 or over, eligibility for a DBS check will need to be determined based on the type of duties they will be required to undertake during their time within the organisation and the level of access this will give them to patients. Quite often, work placements/experience 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 observing clinical practice is not in itself a regulated activity and therefore there is no eligibility for 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 different level of check.

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

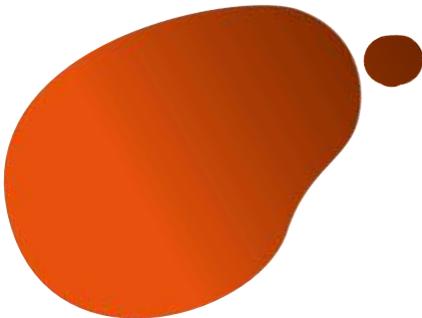
- fully supervised for the full term of their stay within the organisation
- only permitted to carry out duties which are appropriate to their level of knowledge, skills and experience
- not permitted to undertake a regulated activity.

Informing applicants about check requirements

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

Any requirements to obtain a DBS check should be made clear in the job description, advert and in any correspondence relating to an offer of an appointment. This is to ensure that applicants are clear about what information may be sought about them as part of the recruitment process. This includes any automatic exclusion that applies when appointing to a position which involves regulated activity. It should be made clear that individuals who are on one or both barred lists (adults and/or children) must not apply for a position which involves regulated activity with the group that they are barred from working or volunteering with. Making this clear from the outset can be helpful to avoid applicants being required to go through the 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 on a case-by-case basis and without prejudice. 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 within the organisation will be useful in case they have any queries about the recruitment process. It will also be important to advise them where they can seek independent advice should they have any questions or concerns about the type of information they might be required to declare. This may include charity bodies such as [Nacro](#) or [Unlock](#) who provide practical and specialist advice to individuals who may have a criminal history.

If information about an applicant's criminal history is discussed verbally, we would recommend that this is recorded and stored separately and securely on the applicant's file in line with [GDPR guidelines](#). This is in case any challenges are 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.

When considering accepting a disclosure certificate which 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 retrospective⁴ checks on existing members of staff who remain in the same role for the full term of their employment.

There are, however, a range of nationally agreed easements (as outlined below) that require periodic checks for certain highly mobile positions. These easements do not apply to all workers eligible for a DBS check however, employers may decide to require periodic checks for a wider range of professions/positions where it would be considered proportionate to risk. The frequency period for repeat 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 where workers are not subscribed to the DBS Update Service.

⁴ 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.

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 seek advice and ask questions.

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 contract agreement they may have with agencies and other third-party staffing providers.

Where individuals are not encouraged to subscribe to the update service, there should be a condition which makes clear that any such workers will be required to have an annual DBS check as a minimum requirement. This requirement **does not** apply to individuals who have a substantive position with an NHS organisation but are also registered with NHS Professionals to carry out additional temporary work.

Employers must seek written confirmation from staffing providers that the worker has got all the necessary clearances for the role they are being appointed to, and there is no information known about them that may call their suitability into question.

Where considering appointing workers registered with NHS Professionals and the individual declares that they also hold a substantive post in the NHS, assurances will need to 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 obtain additional checks themselves or require this of staffing providers where the necessary assurances cannot be provided, or where concerns have been raised about a worker's suitability which would warrant a new check.

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 DBS Update Service must be required to 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 encouraging subscription to the DBS Update Service as an alternative to three yearly checks, we would recommend that this be done when they first start their foundation training. For those already on a training programme, any 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 body that is 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, conditional cautions or youth conditional cautions (formerly known as reprimands or final warnings) 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.

The model declaration forms include a range of questions that employers are legally permitted to ask of applicants as part of the recruitment process. This includes information about any criminal record history, professional registration and fitness to practise, as may be applicable to the role being appointed to. It may also include issues about conduct and behaviour in a work setting that may also need to be considered as part of an organisation's overall assessment of suitability for a role.

The questions are being revised in April 2019 to bring them in line with best practice and changes to data protection requirements under the General Data Protection Regulation (GDPR), and also to ensure they reflect human rights and equality law. More details on this will follow, employers should ensure they use the most up to date forms as part of the recruitment process:

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](#) may be used to seek a self-declaration from applicants applying for any NHS position where a basic disclosure is being obtained. These positions are known as **non-exempt positions**. This means that the protections afforded to individuals under the Rehabilitation of Offenders Act 1974 apply. See further guidance on eligibility for a basic disclosure on page four.

Employers may find it useful to refer to 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.

[The current Model declaration forms A and B](#) alongside supporting guidance on seeking a self-declaration can also be downloaded from this site.

Overseas police checks

The requirements for overseas police checks currently vary depending on where an applicant is based. We are hoping to have further updates on this and align the picture more fully following further discussion with government bodies.

Tier 1 and 2 visa applicants

The Home Office require all applicants applying to work in the UK under the [Tier 1](#) and [Tier 2](#) routes to provide a police certificate or certificate of good conduct from the country or countries they have resided in for 12 months or more while aged 18 or over, in the last 10 years prior to their application being made (or less if the individual is aged between 18 -27). This requirement also applies to any of their adult dependents (aged 18 or over). The 12 months period is intended to include any countries the individual has been resident in, in a single period or cumulatively.

For Tier 2 applicants, this requirement does not apply to individuals who have been issued with a certificate of sponsorship prior to 6 April 2017 or to those who are applying to renew or extend their current leave to remain in the UK.

Employers should ensure that any applicants coming through these routes are informed about this requirement as early in the recruitment process to avoid any unnecessary delays in the Home Office's ability to process their visa application. For visa purposes, the Home Office will accept a photocopy or scanned copy of the original document. Employers should advise individuals to retain their original certificate as they will be required to present this as part of the recruitment process.

Overseas police certificates and certificates of good standing should be checked in the same way as all other documentary evidence to verify that it is genuine and relates to the individual presenting themselves.

UK & EEA based applicants (with no visa requirement)

If the role you are recruiting to is eligible for a DBS check and the applicant is either living in an EEA country, or they are currently living in the UK but have declared that they have spent a period of six months or more in the last five years in an EEA country, you will need to:

- ask them to provide evidence of police certificate or equivalent from the relevant country or countries; and
- obtain a DBS check (as appropriate to the role) as soon as is reasonably practical so that the individual can provide the necessary documents). This check requirement applies even if the individual states that they have never lived or worked in the UK before.

The six months period is intended to include any EEA countries the individual has been resident in, in a single period or cumulatively in the last five years.

Further information

All overseas police checks must be in accordance with the relevant country's justice system. Some police authorities overseas will provide a certificate of good conduct/standing or other equivalent when you apply for a police check. Employers may accept any such information as a valid police check.

Certificates of good standing issued by an overseas regulator may be considered as part of the overall assessment of conduct and behaviour but are not equivalent to a police check.

Additional time to acquire overseas police checks must be factored into the recruitment process. Wherever possible, prompting individuals to obtain a certificate before they leave their residing country will help avoid any unnecessary delays in them taking up their appointment.

Employers should refer to Home Office guidance which explains how individuals can apply for an [overseas police check](#). This also provides a useful guideline on the cost of a check and anticipated processing times.

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](https://www.gov.uk).

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 information obtained as part of the recruitment process.

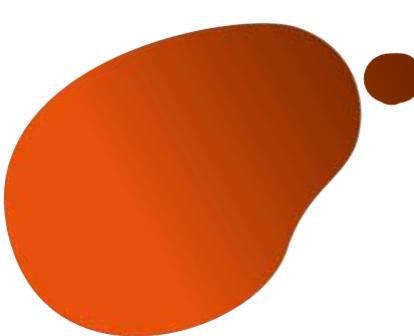
Military and ex-military personnel

If the period spent abroad is because they were or are serving in the armed forces, employers can ask them to provide an extract from their military service record instead of requiring an overseas police certificate or requiring a DBS check in this country.

The extract should expressly disclose any convictions or cautions that the applicant may have been charged with. It should also cover all periods spent overseas of six months or more. The extract must be original and be from a reliable source so that the information can be verified.

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 to information declared.

Convictions and cautions for criminal conduct while serving in the military will be recorded on the Police National Computer (PNC) so any such information will be declared as part of any DBS check an employer chooses to undertake, it will also be included in the individual's military service record. This includes any convictions or cautions that have been committed outside the UK that would be recognised as criminal offences under civilian law if they had been committed in England and Wales, for example, common assault and battery, grievous bodily harm, criminal damage, road traffic offences and fraud.



The above also applies to any serious convictions for disciplinary offences (non-criminal conduct). This relates to disciplinary action that may have been taken against an individual because they demonstrated certain behaviours that would be regarded a crime under military law but would not constitute a crime in civilian life. Any information disclosed either by the applicant themselves as part of a self-declaration, or through their military service record or a DBS check should not be regarded in quite the same way as convictions and cautions. Where relevant to the role being appointed to, employers should consider any issues relating to non-criminal behaviour or conduct as part of their wider assessment of suitability. For further information, employers may find it helpful to refer to 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](https://www.legislation.gov.uk) website.

Other minor convictions for non-criminal disciplinary conduct in the military, (for instance offences not listed in Schedule 1 of the Police and Criminal Evidence Act) will not be retained on the PNC and therefore will never be disclosed in a DBS check but will appear on the applicant's military service record and may be self-declared by an applicant. Employers may wish to consider whether there would be any concerns about patterns of behaviour or conduct which would have a bearing on a role in civilian life but otherwise should disregard this type of information.

Dealing with a positive disclosure

Having a criminal record does not necessarily mean an applicant is automatically barred from being 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. Any such information should be carefully assessed on a case-by-case basis, considering the wider range of information presented during the application, interview and employment check process. This will be essential in ensuring recruitment processes do not unfairly discriminate against individuals who declare they have a criminal record.

If the DBS disclosure certificate simply reaffirms what the applicant has already disclosed to you and you have already taken this information into account, then you can go ahead and issue an unconditional offer of employment.

If the recruitment decision rests with the HR department or other senior member of staff, then you should ensure the decision maker has access to information that is specifically relevant to the position being appointed to, so that they can make a fair and balanced decision. This may include the applicant's initial disclosure and any other relevant information they may have provided in the interim, that may help to inform the risk assessment.

If the disclosure certificate reveals information that you weren't expecting or that the applicant had not previously disclosed, then further consideration may be necessary to ascertain as to why.

The DBS code of practice requires all bodies registered with them to have a policy in place covering the appointment of ex-offenders. As far as possible, the policy should outline the type of offences that are likely to be deemed unacceptable for certain positions. For example, where the disclosure indicates that the DBS has made a barring decision against the children's and/or adults barred lists, this would automatically preclude an individual from being considered for any form of regulated activity with that specific group.

It is illegal for employers to allow an individual to engage in a regulated activity from which they are barred. It is also a criminal offence for individuals to apply for or engage in a regulated activity from which they are barred.

Employers may wish to adopt the [sample policy on recruiting ex-offenders](#) which can be found on the DBS section of the gov.uk website.

Employers have a duty to make a referral to the DBS should they subsequently find out that an individual is applying for or engaging in a regulated activity from which they are barred. Further details about [an employers' duty to refer](#) can be found on the NHS Employers website.

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 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 sole 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 will need to consider any information obtained at the interview and all other information gathered as part of the wider pre-employment check process when making a decision about the individual's suitability for a role.

All discussions should be recorded on file, alongside clear reasons reached to appoint or reject the applicant. All information should be stored securely in line with the DBS code of practice.

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 is relevant to their 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.

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, as outlined are intended to help employers ask the right questions, at the right time and seek confirmation that individuals have understood what information is required of them as part of the recruitment process.

If there are significant discrepancies between the information the applicant has provided and that contained in the disclosure certificate, 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

applicant's disclosure with the applicant in a face to face meeting prior to making a final recruitment decision. This should focus on giving the applicant opportunity to address the employer's concerns. Any discussion must be handled sensitively and without prejudice.

Given the complexity of the criminal justice system, it is easy for applicants to misunderstand what offences would be deemed a caution or conviction. In some cases, the discrepancy may have occurred because applicants may not know what information is contained about them until they receive their disclosure certificate.

If, however, it is clear from the additional information provided that the individual is unsuitable for a specific role, employers will need to have policies in place to manage the withdrawal of an offer of appointment.

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.

NHS Employers has produced guidance on [an employer's duty to refer to the DBS](#), in conjunction with the DBS which includes information about when and how to refer, as well as more information about the legal obligation.

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@db.s.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).

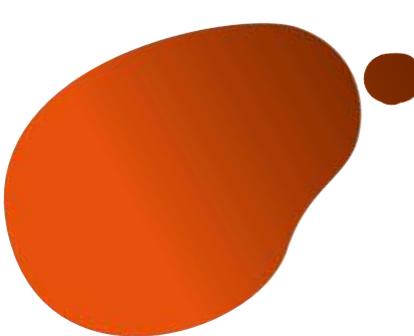
From this date it became unlawful for an employer to require an applicant or existing member of staff (including workers supplied through an agency or contractor) to obtain a copy of their full criminal record directly from the police, probation service or courts by using their 'subject access' rights 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](#).



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.

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 199.
 - 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.

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.

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.

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

Regularly is defined (unless otherwise specified) 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; or
- overnight, any time between 2am and 6am which gives the opportunity for the person to have contact with the adult.

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.

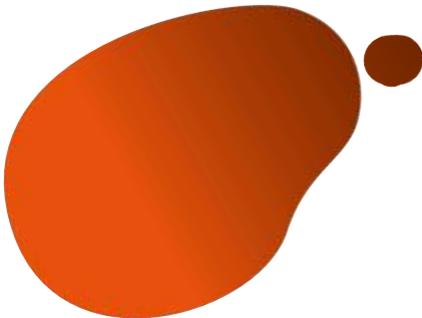
A youth caution (including reprimands and final warnings) will be removed after two years have elapsed since the date of the caution and if it does not appear on the list of specified offences. Again, there is no limit to the amount of cautions that can be filtered.

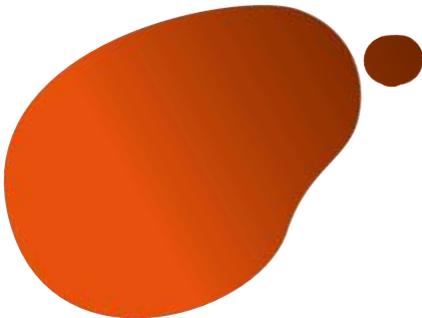
The DBS have provided [guidance](#) outlining the type of criminal offences which would never be filtered from a disclosure certificate.

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.





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