

# GUIDANCE FOR EMPLOYERS: SEEKING A SELF-DECLARATION FROM APPLICANTS

## Introduction

Requiring applicants to complete a self-declaration can be useful to help them gain a greater understanding about the type of checks that will be undertaken as part of an employer's recruitment process. It can also be helpful to inform an employer's overall assessment of an applicant's suitability for a particular role.

Where there are concerns about information disclosed, this can also enable employers to have an open conversation with the applicant at the most appropriate opportunity during the recruitment process. Any such discussion should be aimed at gaining a better understanding about circumstances surrounding any information that may be disclosed by the applicant. Where regarded as necessary and helpful to reaffirm the recruitment decision, this should include opportunity for the applicant to present any additional evidence they may wish a prospective employer to consider in support of their application.

Seeking a self-declaration from applicants should be complementary to good recruitment practice. It does not substitute the need to carry out the range of pre-appointment checks that are required by law or are available to employers. The full range of checks that NHS organisations in England must undertake as part of their recruitment process are outlined in the [NHS Employment Check Standards](#).

## How to seek a self-declaration

Model declaration forms A and B are designed to ensure a fair and consistent approach is taken when obtaining information to assess an applicant's suitability for a position in the NHS. They outline a range of questions that employers are required to ask as part of their recruitment process, 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.

Given that questions 1-4 in each form relate to criminal record information it is essential that employers ask applicants to complete the correct form, as indicated below. This is to ensure that they only have access to information you are legally entitled to consider under the DBS regime.

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 in England and Wales) or the Police Act 1997.

If recruiting to a position eligible for a standard or enhanced DBS check, employers are entitled to ask applicants about all criminal convictions, conditional cautions and youth conditional cautions (formerly final warnings and reprimands) that are not protected (i.e. eligible for filtering) as defined by the Exceptions Order.

This is regardless as to whether the convictions or cautions have become spent or are still considered unspent.

2. Model declaration form B - should be used to seek a self-declaration from applicants applying for any NHS position that is non-exempt from the Rehabilitation of Offenders Act 1974 and therefore a basic disclosure may be considered. Any decision to verify information by obtaining a basic disclosure is discretionary and must be proportionate to risk.

For such roles, employers must only ask for and consider information about unspent criminal convictions, conditional cautions and youth conditional cautions.

Employers should refer to the [criminal record check standard](#) and [online DBS eligibility tool](#) on the NHS Employers website, to determine whether the role is eligible for a basic, standard or enhanced DBS check.

[Model declaration forms A and B](#) can also be downloaded from this site.

## When to seek a self-declaration

Employers should ensure that processes do not unnecessarily prevent or restrict individuals who may have made past mistakes but who are perfectly safe and meet all the relevant criteria for the role being advertised.

Under normal circumstances, employers should only require successful applicants to complete a self-declaration using model declaration form A or B, once the conditional offer of appointment has been issued. This is to ensure that applicants are considered fairly on their skills, experience and ability to carry out the role in question.

Any requirement for applicants to complete one of these forms earlier in the recruitment process should be proportionate to risk. For example, if there is a safeguarding need to recruit quickly to mitigate risks to patient services or care during winter pressures. Under such circumstances, we would recommend that this is only required of applicants who have been short-listed for interview. Requirements to obtain information earlier in the recruitment process should be made clear to individuals when they first make their application.

In all cases, information obtained using model declaration forms A or B must be processed in line with the Data Protection Act 2018 and General Data Protection Regulation 2018 (GDPR). Further [information about requirements under GDPR](#) can be found on the NHS Employers website.

## Internal recruitment

Employers are not required to ask existing workers or volunteers to complete a new declaration where they are applying for another position within the same organisation and the new role is the

same, or very similar, to their current role. Any ongoing assessment of an individual's continued suitability should be based on what information has already been gained about them while working or volunteering within the organisation.

There is an ongoing duty for all directly employed staff to inform their employer of any changes to their registration, fitness to practise and criminal record information as part of their terms and conditions of employment. Where existing staff are changing roles within the same organisation, employers should aim to seek the necessary assurances by requiring them to sign a short statement which confirms that their circumstances have not changed since they were first appointed. This may be something that employers wish to consider mirroring for other workers and volunteers who are changing roles within the same organisation, where it is proportionate and appropriate to do so.

## Providing information for applicants

Under the Data Protection Act 2018 and General Data Protection Regulation 2018, there is an increased duty for employers to be accountable for the data they hold about individuals. Recruitment packs should provide applicants with absolute clarity about what information will be collected about them, the lawful basis for collecting it, and how it will be processed and retained.

Providing a statement which outlines your local policy on recruiting individuals that have a criminal record will also be helpful to reinforce your organisation's commitment to ensuring that all applicants are treated equally and fairly on their skills and ability to carry out the role in question.

Employers should make clear to applicants that declaring information using model declaration form A or B does not mean an automatic ban to employment in the NHS, unless there is a legal or regulatory reason which would prevent them from being considered for a specific role. For example, if appointing to roles which involve a regulated activity, it is helpful to make it clear in the advert and recruitment pack, that it is an offence for a person who is barred from working with adults and/or children to apply for/or engage in, a regulated with that specific group. Declaring this from the outset will be helpful to avoid going through a recruitment process unnecessarily, it may also help reduce any challenge from applicants about unfair practice.

Information in recruitment packs should also include links to where applicants may seek advice to help them understand the type of information they may be asked to provide as part of the recruitment process and their rights under law. This may include signposting to a relevant union representative, their regulatory or professional body (if applicable), the Citizen's Advice Bureau and other charities, such as Nacro and Unlock, who specialise in providing advice and support to individuals who have a criminal record.

## Where criminal offences have been declared

The suitability of an applicant with a criminal record may vary, depending on the nature of the job, the type of duties that role will involve and the relevance, nature and circumstances of the offence in question.

Any potential risks that may be identified during the recruitment and checking process will need to be handled sensitively and carefully assessed on a case-by-case basis.

## Discrepancies in information provided

The criminal justice system and criminal records disclosure regime can be complex and difficult to understand. Many applicants are confused about what their criminal record is and what they are required to disclose for employment purposes, so can genuinely make the mistake of incorrectly disclosing information or omitting relevant information. Employers should not automatically assume that an error in disclosure is intended to deceive. Discussions about discrepancies between information provided by the applicant and that declared as part of a DBS check, should be approached sensitively. Wherever possible, we recommend this includes a face to face meeting with the applicant, giving them opportunity to explain.

Where serious misdirection is evident, employers may reconsider their appointment offer and/or take any necessary formal action against the individual if already employed or volunteering within the organisation.

If the applicant has tried to apply for/or is engaged in a regulated activity in which they are barred from working or volunteering, employers should consider whether they need to notify any relevant professional regulatory or licencing body, as well as making a referral to the Disclosure and Barring Service (DBS).

Further information about [the employer's duty to make a referral to the DBS](#) can be found on the NHS Employers website.

## Military and ex-military personnel

Some criminal convictions and cautions that apply under military service law may not be considered as such under civilian law. Employers will therefore need to ensure that they treat information that may be declared in a self-disclosure by military or ex-military personnel in an appropriate and proportionate manner.

Convictions and cautions for criminal conduct while serving in the military will be recorded the Police National Computer (PNC) so any such information will be declared as part of any DBS check. It will also be included in the individual's military service record which can also be accepted by employers instead of obtaining a DBS check. 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 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](http://legislation.gov.uk) website.

Other minor convictions for non-criminal disciplinary conduct in the military (i.e. offences that are 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.

## Retaining information

Once a recruitment (or other relevant) decision has been made, employers should not keep model declaration forms and any supplementary evidence that applicants may have chosen to disclose with these forms, for any longer than is necessary. We would recommend that this should be for a minimum period of six months to allow for considerations and resolution of any disputes or complaints. There may be circumstances where employers are required to retain information for a longer period i.e. for the purpose of demonstrating safe recruitment practice, as part of any scheduled safeguarding audits.

All information will need to be processed in compliance with the Data Protection Act, General Data Protection Regulation (GDPR) and the Human Rights Act. Information must be kept securely and separately from any personnel records and access should be strictly limited to those who are entitled to see it as part of their duties. This should be made clear within any local policy on the correct handling and safekeeping of sensitive personal data.

Once the retention period has elapsed, any information provided in these forms or with these forms should be destroyed by secure means, for example by shredding, pulping or burning. While awaiting destruction, the secure handling of information, as outlined above, should prevail.

While the form and any supplementary information provided by applicant's chose to provide should be destroyed in the manner outlined above, employers should keep a record of the date of when the self-declaration was requested/received, the position for which the self-declaration was requested. To ensure openness and transparency, employers will also find it useful to keep an accurate record of information discussed with the applicant and the considerations made during the decision-making process in order to consider and resolve any challenges about the recruitment decision further down the line.

## Legislation to consider

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

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

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

- [Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975 \(Amendment\) \(England and Wales\) Order 2013](#) which amends the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. This amendment introduced the DBS filtering rules which means that certain spent or minor convictions and cautions are now protected (filtered out) when specific conditions are met and will never be included in a standard or enhanced disclosure certificate.

It is critical for employers to familiarise themselves with this act and the impact it has on the type of criminal history information you are entitled to ask for and consider as part of your organisation's recruitment process. More information about protected convictions and cautions can be found in the criminal record check standard on the NHS Employers website.

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

In April 2013 LASPO also introduced youth cautions and youth conditional cautions to replace reprimands and final warnings. This refers to where a young person commits their first or second minor offence, and has not been to court before, the police may therefore consider giving them a Youth Restorative Disposal, a Police Caution or a Youth Conditional Caution instead of the young person having to appear at court.

- [Supreme Court judgement](#) - Employers should be aware that in January 2019 the Supreme Court ruled that two aspects of the criminal records disclosure regime would contravene a person's human rights. In particular, the blanket rules which require the automatic disclosure of youth cautions and other minor offences as part of a standard or enhanced disclosure means that people who are fully rehabilitated and are trying to move on with their lives are repeatedly disadvantaged in later life.

Employers are currently permitted to ask for and consider this type of information without any legal challenge but may not be able to once the outcomes of the judgement have been made clear. Details about the Supreme Court judgement and what this means to employers will be published on the [Employment Checks section](#) of the NHS Employers website as soon as more information is known.

The various pieces of legislation which underpins employment check requirements including those under the DBS regime, are periodically subject to change, we therefore strongly recommend that

you regularly review your local recruitment policies and processes to ensure they remain fully compliant with current legislation, including the Data Protection Act 2018 and the General Data Protection Regulation 2018. This includes the handling, storage, retention and sharing of any information that might be disclosed by an applicant as part of their application or when providing a self-declaration using model declarations form A or B.

## Useful links

- [Model declaration forms A and B](#) – standardised templates to obtain a self-disclosure from applicants applying for roles in the NHS (NHS Employers website)
- [NHS Employment Check Standards](#) – outlines the check requirements that must be undertaken when considering NHS positions in England including: identity, right to work, criminal record, work health assessments, professional registration and qualification and references (NHS Employers website)
- [Recruiting people who have criminal offences](#) – promotes positive work being undertaken by NHS organisations in partnership with prison services, community groups and charity bodies to support those who have a criminal record to get back into work. Includes myth-busting, key considerations, and case studies (NHS Employers website)
- The following websites provide practical guidance for employers and individuals on the DBS filtering rules. They also outline which offences are protected (i.e. are eligible for filtering) and therefore will never be disclosed in a DBS check and must not be considered as part of the recruitment process:
  - [Nacro website](#)
  - [Unlock website](#)
  - [DBS website](#)