

# CRIMINAL RECORD CHECKS

This guide details the criminal record checking requirements for eligible roles in the NHS.

May 2022

# Contents

1. Introduction
  - 1.1 What is a criminal record check?
  - 1.2 Importance of a criminal record check
  - 1.3 Where to obtain a criminal record check
  - 1.4 The role of the Disclosure and Barring Service
2. Type of criminal record check
  - 2.1 Basic check
  - 2.2 Standard check
  - 2.3 Enhanced check without barred list information
  - 2.4 Enhanced check with barred list information
  - 2.5 DBS Adult First service - regulated activity
  - 2.6 DBS update service
3. Minimum requirements
  - 3.1 Determining eligibility for a check
  - 3.2 When to request a DBS check
  - 3.3 Taking up a position before the check outcome is known
  - 3.4 Existing staff changing roles within the same organisation
  - 3.5 Students
  - 3.6 Work placement/experience
  - 3.7 Informing applicants about check requirements
4. Portability
  - 4.1 Accepting a pre-disclosed certificate
  - 4.2 Verifying pre-disclosed information
5. Periodic checks
  - 5.1 Introducing periodic checks
  - 5.2 Temporary workers and contractors
  - 5.3 Doctors in training
6. Using an external agency to carry out DBS checks

- 7. Other types of check
  - 7.1 Seeking a self-declaration
  - 7.2 Overseas police checks
  - 7.3 Overseas applicants
  - 7.4 Applicants with time spent overseas
  - 7.5 Unable to obtain an overseas police check
  - 7.6 Military service records

- 8. Positive disclosures
  - 8.1 Responding to a positive disclosure
  - 8.2 Assessing criminal record information
  - 8.3 Discrepancy in information provided

9. Legal duties to refer to the DBS

10. Storage, retention and disposal of records

11. Checking authenticity of disclosure certificates

Appendix 1: Legislative drivers

Appendix 2: Eligibility for an enhanced without barred list check

Appendix 3: Filtering rules

# 1. Introduction

## 1.1 What is a criminal record check?

- 1.1.1 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.
- 1.1.2 In most cases, a check will include criminal convictions, cautions and other similar offences, such as traffic offences for speeding and drink-driving. In some countries the record is limited to actual convictions issued by a court of law, while others will include arrests, charges, charges missed or pending, and even charges of which the individual has been acquitted.
- 1.1.3 This document describes the legislative requirements for employers that apply to England only.

## 1.2 Importance of a criminal record check

- 1.2.1 Carrying out a criminal record check can help to ensure unsuitable people are prevented from entering the workforce and gaining access to individuals who may be more vulnerable because they are receiving health care or services.
- 1.2.2 While this type of check can provide a level of assurance about a person's suitability it should not be relied on in isolation. Employers should consider criminal record information alongside the wider range of evidence gathered at

the application, interview, and pre-employment checking stages.

- 1.2.3 Employers should request or check criminal record information at the end of the recruitment process to help ensure the candidate is assessed on their merits and without prejudice. It also helps to remove any risks of unfairly ruling out those who may have made mistakes in their life but who would otherwise meet all other essential criteria for the role in question and are safe and suitable for employment.

## 1.3 Where to obtain a criminal record check

- 1.3.1 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).

- 1.3.2 Employers must obtain checks from the relevant body for their geographical location. This is because of variances in how legislation operates in different parts of the country. For instance, certain offences may be regarded differently from one part of the country to another, or different periods of rehabilitation may be imposed therefore affecting the type of criminal record information employers need to consider. All three agencies referenced above have reciprocal arrangements in place to share criminal record information where offences are considered the same in that country.

## 1.4 The role of the Disclosure and Barring Service (DBS)

- 1.4.1 The DBS supports employers to make safe recruitment decisions by providing 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.

## 2. Type of criminal record check

### 2.1 Basic check

2.1.1 Basic checks may be obtained for positions that are covered by the Rehabilitation of Offenders Act 1974, referred to within legislation as non-exempt positions. A basic check provides information about conditional cautions and convictions that are unspent only. This is because the Act allows for certain offences to become legally ignored or spent after a specified rehabilitation period. The length of any rehabilitation period is determined by the sentence or out-of-court disposal received. Once the rehabilitation period has elapsed and if the individual has not been reconvicted at any time during this period, their record becomes spent and they will not be required to declare these offences, nor are employers permitted to consider this type of information in their assessment of suitability for the position. When recruiting to a non-exempt position, employers must ensure they do not ask for information they are not legally permitted to consider as part of their assessment of suitability.

2.1.2 Basic checks may be considered for any NHS position that would not normally be eligible for a standard or enhanced check. We would suggest that this level of check applies to roles which have a higher level of responsibility, accountability, or trust and where such a check would be considered proportionate to any associated risks.

Employers can either ask for an applicant's consent to obtain a basic disclosure on their behalf or require applicants to apply for one directly. All applications for a basic disclosure should be made through the [online facility](#) on the DBS website.

## 2.2 Standard check

- 2.2.1 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).
- 2.2.2 A standard check provides information about spent and unspent criminal convictions, cautions and other such offences that are not protected (i.e. eligible for filtering). This may also include information about any offences committed in Scotland and Northern Ireland that may equally be regarded as an offence under English law. Further information about offences that are protected under the DBS filtering rules can be found in [Appendix 3](#).
- 2.2.3 To meet eligibility for a standard check, the position must require the individual in that role to be involved in the provision of a health service which would also give them access to persons in receipt of health services as part of their normal duties.
- 2.2.4 We would advise that access to persons in receipt of health services should exclude roles where this is limited or incidental i.e. no more than a visitor to a hospital site. For example, when working or volunteering in public areas where persons in receipt of health services may also be present or when needing to pass through areas where persons are in receipt of health services to get to their normal place of work.

## 2.3 Enhanced check without barred list information

- 2.3.1 To be eligible to request an enhanced check, the position must be listed as exempt under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and, in

addition, be listed in the Police Act 1997 (Criminal Records) (Amendment) Regulations 2013 as work with adults and/or work with children. For ease of reference, you will find an extract from the Police Act which outlines eligibility for work with adults and work with children in [Appendix 2](#).

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

## 2.4 Enhanced check with barred list information

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

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

- [Regulated activity with adults](#)
- [Regulated activity with children](#)

2.4.3 This level of check will include the same information as the enhanced disclosure. It will also outline whether the person is barred from carrying out certain activities with children and/or adults, as may be applicable to the role.

2.4.4 Employers should note that it is unlawful for them to knowingly allow an individual to engage in a regulated activity with the group(s) they are barred from working or volunteering with.

Individuals are also committing a criminal offence if they apply for/or engage in any form of regulated activity with the group(s) from which they are barred. Where such cases become evident, employers must be clear about their legal obligations to make a [referral to the DBS](#).

## 2.5 DBS Adult First service – regulated activity

- 2.5.1 The [Adult First Service](#) enables employers to obtain a fast-track check against the adults barred list. This check does not remove the need to obtain a full enhanced disclosure, but it can help to mitigate risk where any delay to recruitment would have a significant impact on the provision of services and/or patient safety. For example, this might be during the winter period when there is an increased pressure on NHS services.
- 2.5.2 If the check confirms that the individual is not barred from working with adults, and all other recruitment criteria has been met, employers can allow them to start work under supervision while waiting for the outcome of the full enhanced disclosure. The precise nature and level of supervision will vary from case to case. Employers must ensure that the supervision in place is sufficient, in their judgement, to provide reasonable assurance for the protection of adult persons in receipt of health services.
- 2.5.3 It is important to be mindful that the full enhanced disclosure may include additional information which will need to be considered before any unconditional offer can be confirmed. Employers must make it clear to individuals that any appointment remains conditional until the full enhanced disclosure has been received, regardless of any fast-track check against the adults barred list.
- 2.5.4 There is no equivalent fast track service which enables a check against the children's barred list. Where individuals are working with children as well as adults or working with children only, employers will need to wait to receive the full enhanced

disclosure to confirm they are not barred before allowing individuals to start work.

## 2.6 DBS update service

- 2.6.1 The [update service](#) is available for prospective and existing employees to subscribe to when an application for a DBS check is made. Subscription to the service allows for standard or enhanced certificates to be updated and allows employers to mitigate risk by carrying out a quick and easy check online instead of requiring individuals to have a new DBS check each time they change roles and where the new position does not alter the type or level of check required.
- 2.6.2 Employers should ask applicants if they are already subscribed to the service as part of the recruitment process and seek their permission to access their information online. If not already subscribed, employers may wish to consider whether it would be beneficial for them to encourage applicants to subscribe when a DBS check is first obtained.
- 2.6.3 If encouraging subscription to the update service, employers should make it expressly clear that individuals have a personal responsibility to ensure their account details remain accurate, up to date and subscription fees are paid on time for the full term of their employment. Any lapse in subscription will mean automatic updates on their criminal record status will cease and a new check will be required for them to resubscribe. Employers may wish to consider putting mechanisms in place to prompt staff to periodically check that their name, address and bank details remain correct (for example through ESR or other similar system). This will be particularly important for individuals who have opted in for automatic renewal of their subscription, as they may assume no further action is required.
- 2.6.3 See further information in our employer's guide to the [DBS update service](#).

# 3. Minimum requirements

## 3.1 Determining eligibility for a check

- 3.1.1 Employers must undertake an eligibility assessment to determine whether a check needs to be carried out and if so, the correct type and level of check required for the role in question.
- 3.1.2 Requirements under the criminal record regime are complex and can be difficult to understand. Not all NHS positions will be eligible for a DBS check. The trigger for a check and the level of check required is determined by the type of activities the individual in that role will be required to undertake and the level of access this will give them to persons in receipt of health services. It will therefore be essential for employers to provide as much information as possible to ensure recruiting managers understand the eligibility criteria for each level of DBS check and applicants have clarity on what type of information they need to declare.
- 3.1.3 Employers may find it helpful to refer to our online [DBS eligibility tool](#). The tool asks a series of questions to identify whether an NHS position meets the criteria for a DBS check. You can also find a series of [scenario-based examples](#) to demonstrate how different responsibilities can impact on the level of check required. Further information on DBS eligibility is available on the [gov.uk website](#).

3.1.4 For background information see [Appendix 1](#) which contains a list of all the key pieces of legislation which either permit or legally require employers to obtain a DBS check.

## 3.2 When to request a DBS check

3.2.1 Where a position meets the eligibility criteria, employers should undertake a DBS check at the end of the recruitment process and once the provisional offer of appointment has been made. It is important to make clear that any offer of appointment and/or contract of employment remains conditional until all satisfactory checks have been completed, including a DBS check. The disclosure certificate will be sent directly to the individual, employers will therefore need to ask applicants to present their original copy of the disclosure certificate at the earliest opportunity, to reduce delays in them taking up appointment.

3.2.2 Where individuals are subscribed to the DBS update service, the employer will need to check the individual's criminal record status online. Employers must seek the individual's permission to access their information online and ask them to present their original disclosure certificate. Be mindful that there are requirements to obtain a new DBS check where individuals are changing roles and the new position changes the type and level of DBS clearances required, regardless as to whether they are subscribed to the update service.

## 3.3 Taking up a position before the check outcome is known

3.3.1 Employers may, in exceptional circumstances, make a risk-based decision to allow individuals to take up their appointment before the outcome of their DBS check is known. Exceptional circumstances include where individuals are required to complete a period of induction or training in advance of them starting in their role. Where practical, it may also include allowing individuals to start work or volunteer in a

limited capacity, for example, restricting duties to non-regulated activity until the outcome of the check is known.

- 3.3.2 If recruiting into a regulated activity with adults, employers may wish to consider obtaining a quick check against the barred list through a DBS Adult First check.

### 3.4 Existing staff changing roles within the same organisation

- 3.4.1 There is no requirement for employers to obtain a fresh DBS check on existing members of staff who are changing roles within the same organisation and where the roles and responsibilities of the new job do not change the type or level of DBS clearances required. Any request for a repeat check should be proportionate to risk and will be dependent on whether local policy requires periodic checks or subscription to the DBS update service.
- 3.4.2 Employers should make it clear to all staff that they have a duty under the [NHS Terms and Conditions of Service](#) to notify any organisation they are employed or volunteering with, if they subsequently become subject to any convictions, police cautions, conditional cautions or other similar offences, at any point during their term of appointment. It may be in an employers' best interest to outline similar requirements for volunteers or temporary/contracted workers.

### 3.5 Students

- 3.5.1 Students undertaking vocational placements as part of a professional qualification are likely to be eligible for a DBS check. The employer 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.
- 3.5.2 Employers may choose to pass the responsibility to undertake a DBS check to the educational establishment where the

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

## 3.6 Work placement/experience

- 3.6.1 The [Protection of Freedoms Act 2012](#) legislates that DBS checks must only be conducted on individuals who are aged 16 or over. When offering work placements/experience to individuals under the age of 16, the host organisation should rely on other sources of evidence gained through their check process to assess a young person's suitability.
- 3.6.2 Eligibility for a DBS check for those aged 16 and over will need to be based on the type of duties individuals will be undertaking while on placement and the level of access this will permit them to have with persons in receipt of health services. Quite often, work placements are only for very short periods of time, therefore the host organisation may decide that it would not be practical or proportionate to seek a DBS check. In such cases, the reasons for not carrying out a DBS check must be recorded and retained on file and appropriate safeguards put in place to manage that individual.
- 3.6.3 Individuals on work placements or experience should not be allowed to engage in a regulated activity. Observing clinical practise is not a regulated activity and therefore an enhanced with barred list check is not required. The host organisation should consider whether the duties or contact with persons in receipt of health services would meet eligibility for other levels of DBS check (i.e. basic, standard or enhanced without barred list).

3.6.4 In all cases, the host organisation must ensure that all individuals invited to carry out a work placement or experience are suitably supervised for the full term of their stay within the organisation and only permitted to carry out duties which are appropriate to their level of knowledge, skills, and experience.

## 3.7 Informing applicants about check requirements

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

3.7.2 Clearly stating the type of checks that will be undertaken as part of the recruitment process allows individuals to make an informed decision about whether to apply for certain roles. Being clear about automatic exclusions that apply to regulated activity i.e. if they appear on the adults or children's barred list(s), will be helpful to ensure time and resources are not wasted on requiring individuals to go through an interview process, only for their application to be rejected further down the line.

3.7.3 Providing information about your organisation's policy on recruiting individuals who have a criminal record will also help reassure applicants that your organisation is committed to adhering to fair recruitment practice. The DBS have provided a [sample policy on recruiting ex-offenders](#) which you can adopt for this purpose.

3.7.4 Providing applicants with a point of contact within your organisation is also recommended in case they have any questions about the recruitment process. Given the complexities of the criminal justice system, signposting them to charity bodies such as [Nacro](#) or [Unlock](#) will also be necessary to ensure they understand what criminal record information they need to declare and their rights when doing so.

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

# 4. Portability

## 4.1 Accepting a pre-disclosed DBS certificate

- 4.1.1 DBS disclosure certificates have no specific term of validity. They only provide information that's known about an individual at the time of issue. The most reliable way of ensuring you have access to the most up to date information about a person's criminal record status and therefore enabling portability, is by encouraging them to subscribe to the DBS update service.
- 4.1.2 Employers may choose to accept a disclosure certificate that was obtained for a previous role based on risk assessment, but you must always check the applicant's identity matches the details on the certificate, check the certificate is the right level and type for the role applied for and check to see if anything has changed if the individual is signed up for the update service.
- 4.1.3 Employers considering pre-disclosed information should always factor:
- The date of the last disclosure – if obtained some time ago, eligibility requirements may have changed. Also, any lapses in time may also mean the person's criminal record status could have changed.
  - What are the risks associated with the new role – are the roles and responsibilities the same or similar, is the check at the right level.

- The previous disclosure will have been issued based on another organisation's ID verification process. The new employer must 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.

## 4.2 Verifying pre-disclosed information

4.2.1 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).

# 5. Periodic checks

## 5.1 Introducing periodic checks

- 5.1.1 Although not a legal requirement, employers may choose to introduce periodic checks. The frequency by which employers require periodic checks should be decided at a local level. Employers may choose to apply requirements to certain professions or more widely to all positions that are eligible for a DBS check. All requirements to recheck members of staff should be proportionate to risk.
- 5.1.2 Where introducing periodic checks, there is no need to apply these retrospectively. Members of staff who have been employed prior to the arrangements coming in will be captured as part of the natural cycle of checking.
- 5.1.3 If considering introducing periodic checks under new policy, then it will be critical to engage trade unions and legal teams so that you are compliant with requirements under the DBS regime, data protection and other employment law. Engaging with your communications teams will also be helpful to ensure changes are clearly communicated and understood by all workers who may be impacted.
- 5.1.4 There are a few easements (described below) that have been agreed nationally with employers as recommended good practice while developing the NHS Employment Check Standards. These were introduced to enable employers to

reasonably mitigate risk before the DBS update service was introduced and can continue to be adopted as an alternative.

## 5.2 Temporary workers and contractors

- 5.2.1 Not all temporary workers and contractors are eligible for DBS checks. When entering into contractual agreements with agencies and other third-party staffing providers, employers will need to clearly outline the need for a DBS check and the level of clearances required.
- 5.2.2 Where individuals are not subscribed to the DBS update service, there should be a condition which requires any eligible workers to have an annual DBS check as a minimum requirement. Employers must seek written confirmation from the staffing provider that the worker they are supplying has got all the necessary clearances to undertake the role they are being appointed to, and there is no known information about them that may call their suitability into question.
- 5.2.3 If the worker is registered with NHS Professionals to carry out additional temporary work while also holding a substantive post in the NHS, there is no requirement for an annual DBS check, but assurances should be sought from their substantive employer to confirm that all necessary checks were undertaken when they were first appointed. A new DBS check must always be obtained if the individual subsequently leaves their substantive post or has had a break in service for a continuous period of three months or more immediately prior to them registering as a temporary worker with NHS Professionals.
- 5.2.4 Employers may require additional checks to be undertaken where the necessary assurances cannot be provided or where concerns have been raised about a worker's suitability. Additional checks may be undertaken by the employing organisation or this can be required of the staffing provider, depending on contractual arrangements set in place.

## 5.3 Doctors in training

- 5.3.1 Doctors on educational training rotations should be regarded as being in continuous employment for the full term of their training programme.
- 5.3.2 Trainee doctors who are not subscribed to the DBS update service must have a DBS check at least once every three-years. Employing organisations will need to seek written confirmation that a DBS check has been obtained within the preceding three-year period and it is at the correct level for the role they will be undertaking.
- 5.3.3 Where considering requiring individuals to subscribe to the Update Service as an alternative to three-yearly checks, we would suggest that this is done when individuals first start their foundation training. For those already on a training programme, any new requirement to subscribe to the DBS 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 DBS update service if their three-yearly check is still valid.

# 6. Using an external agency to carry out DBS checks

- 6.1.1 In cases where the responsibility for carrying out checks has been delegated to an external agency registered with the DBS (known as an umbrella body) the employing organisation will need to seek written assurances of the outcome of any checks it carries out on their behalf.
- 6.1.2 If the disclosure comes back clear (that is, if it confirms that the individual does not have any criminal convictions, cautions or other similar offences), then the employer can accept written confirmation from that agency that this is the case, without the need to see the original disclosure certificate.
- 6.1.3 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.

# 7. Other types of check

## 7.1 Seeking a self-declaration

- 7.1.1 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.
- 7.1.2 For this purpose, we have produced two model declaration forms which outline a range of questions employers are legally entitled to ask of applicants, including information about criminal records, registration with professional bodies and fitness to practise, as may be appropriate to the role being appointed to. They also include questions about issues relating to conduct or behaviour in circumstances that may be relevant to consider in a work-related setting.
- 7.1.3 Employers may use the model declaration forms or adapt their own organisational forms to include the questions outlined. The forms are periodically reviewed to ensure they remain compliant with legal requirements under the DBS regime, data protection, equality and human rights. It is therefore important for employers to ensure they refer to the NHS Employers website to ensure they are using the correct forms:

[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.

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

- 7.1.4 Further guidance can be found in our guide on [seeking a self-declaration](#).

## 7.2 Overseas police checks

7.2.1 Overseas police checks must be in accordance with the relevant country's justice system. Some police authorities overseas will only provide a certificate of good conduct or standing. Any such certificates issued by a police authority are valid and can be accepted. A certificate of good standing issued by an overseas regulator is not equivalent to a police check but may still be helpful to inform the overall assessment of suitability for a role.

7.2.2 Further guidance about how individuals can apply for an [overseas police check](#) is available on the Home Office website.

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

## 7.3 Overseas applicants

7.3.1 Individuals applying for a visa to work in the UK in health, social care and education sectors must provide an overseas police check as part of their visa application.

- 7.3.2 Certificates must be provided for any country (excluding the UK) in which they have resided in for 12 months or more (whether continuously or in total) in the last 10 years, while aged 18 or over.
- 7.3.3 Employers are recommended to inform applicants of this requirement as early in the recruitment process as possible, for example when assigning a Certificate of Sponsorship (CoS). It should also be made clear that a translated copy must be provided where the certificate is not issued in English.
- 7.3.4 A certificate from an applicant's most recent country of residence will normally only be considered valid if it has been issued no earlier than six months before their visa application date. If the applicant has resided in another country or countries within the last 10 years, certificates obtained from the relevant authority for that country will be considered valid indefinitely.
- 7.3.5 For visa purposes, the Home Office will accept a photocopy or scanned copy of the original police certificate. However, employers should make it clear to the applicant that they will need to present their original certificate for employment checking purposes.
- 7.3.6 In addition to any overseas police check, the Home Office recommends that employers should obtain a DBS check to assure themselves that the person does not have a criminal record in the UK; and, where relevant to the role, is not barred from working with children and/or adults.
- 7.3.7 In some cases, the DBS may have information sharing arrangements with certain overseas countries and therefore this may further help to validate any information provided in the overseas police check.
- 7.3.8 DBS checks should be obtained as soon as practical, i.e. when the applicant can be reasonably expected to provide the

necessary documentation required in the [DBS identity checking guidelines](#) for a check to be processed.

## 7.4 Applicants with time spent overseas

7.4.1 Where recruiting individuals who have spent time overseas, employers should consider whether an overseas police check may be required. This applies where applicants declare they have spent a significant period overseas within the last five years. We would suggest that a significant period should be considered as any period of six months or more (whether continuously or in total) within the last five years.

## 7.5 Unable to obtain an overseas police check

7.5.1 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 the Embassy or High Commission in the relevant country for advice on what to do. Contact details can be found on the [gov.uk website](#).

7.5.1 Employers should ask applicants to show any attempt made to seek an overseas police check and any reasons given as to why one could not be obtained. Where it is genuinely not possible to obtain an overseas police check, employers will need to base their recruitment decision on the wider range of evidence presented to them as part of the recruitment process, including character and other references.

## 7.6 Military service records

7.6.1 If an applicant declares that they are serving in the armed forces, employers can ask them to present an extract from their military service record instead of obtaining an overseas police check or a DBS check. This should disclose any criminal or military offences the individual may have been

charged with while serving in any country, where the offence would be considered the same in the UK.

7.6.2 If the applicant has left the armed forces, it is important to note that any military record will only be relevant up to the point they were in service. Employers should therefore assess whether a DBS check may still be required.

7.6.3 The extract must be original and issued by and verified through the force they were serving with. It is important to note that some criminal offences that apply under military service law may not be regarded as such under civilian law. Employers will therefore need to take a proportionate approach when considering any such information. For instance:

- Convictions and cautions relating to criminal conduct while serving in the Armed Forces are recorded on the Police National Computer (PNC) and employers should consider this type of information in the same way as they would a criminal conviction or caution in a DBS check.
- Serious convictions for disciplinary offences (non-criminal conduct) would also be recorded on the PNC. However, this is more likely to include disciplinary action for behaviours that may be a crime under military law but would not be considered so in civilian life. These offences should not be treated in quite the same way as described above but may need to be considered as part of their overall assessment of suitability.

7.6.4 In both cases, employers should only consider information that would be relevant to the role they are appointing to.

7.6.5 Information about what constitutes as a disciplinary offence under military law can be found in Schedule 1 of the Police and Criminal Evidence Act (Armed Forces) Order 1984 (Recordable Service Offences) Act 2009 which can be found on the [UKSI website](#).

# 8. Positive disclosures

## 8.1 Responding to a positive disclosure

- 8.1.1 Having a criminal record does not automatically mean an applicant cannot be considered for a position in the NHS.
- 8.1.2 The decision to recruit a person whose criminal record check reveals a conviction, caution or other relevant information always rests with the employing organisation. This information should be carefully considered on a case-by-case basis and assessed against what other information the applicant has presented during the application, interview, and employment check process. Taking this approach is important to ensure you do not unfairly rule out individuals who are the best candidate for the role, meet all other necessary check criteria, and no risks have been identified against the duties they would be required to perform.
- 8.1.3 If the DBS disclosure certificate simply reaffirms what the applicant has already disclosed to you and you have already considered this information, then you may issue an unconditional offer of employment.
- 8.1.2 If the recruitment decision rests with HR or another senior member of staff, then you should ensure the decision maker has access to any information that is relevant to the role being appointed to, so that they can make a fair and balanced decision. This may include the applicant's self-disclosure and any supplementary information they may have provided to support their application.

8.1.3 If the DBS check reveals information that you weren't expecting or is conflicting with what the applicant has disclosed, then further consideration may be necessary to ascertain as to why. See further [guidance](#) about considering a discrepancy in information provided through self-disclosure.

## 8.2 Assessing criminal record information

8.2.1 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.

8.2.2 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.

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

- The relevancy of any offences to the role being appointed to. It is essential that any assessment considers offences that are relevant to the nature of the role and where there may be ongoing concerns about the individual's conduct or behaviour.
- Any legal or regulatory requirements. For example, where appointing to a regulated activity, you must not allow a person to engage with vulnerable groups (adults, children or both adults and children) where the DBS have made a

barring decision which would prevent them from working or volunteering with that specific group or groups.

- The nature and seriousness of the offence(s). This is important because all offence codes cover a broad range of crimes that significantly vary in terms of seriousness.
- The age of the applicant at the time of the offence(s). Crimes that date back to when the person was growing up may not be relevant because applicants have put their past behind them.
- If there is a repeat or pattern of offending behaviour. Patterns of offending behaviour or repeated allegations may indicate that they have not put their offending behind them.
- The circumstances surrounding the offending behaviour and the explanation offered by the individual. Consideration should be given to any change in the applicant's circumstances since the offence/s or took place. For instance, those who were convicted when they were young, often do not reoffend once they have family or financial responsibilities. It may be helpful to reflect on the applicant's attitude at the time of the offence and now.
- Any life experiences they may have had since the offending behaviour to evidence their rehabilitation. Many people reach a point where they want to put their offending behind them and can demonstrate how they have put their talents to more constructive use. For example, volunteering activities or work in the community they have undertaken, or evidence they can provide which demonstrates a change in their home and personal circumstances.

#### 8.2.4 Any discussions at interview should be handled sensitively.

The purpose of the interview is to gather information from the applicant to assess whether they may pose an ongoing risk if appointed to the position being offered. Employers may find it useful to refer to our [positive disclosure – a discussion guide](#) which is intended to help recruiting managers follow best

practice when having a conversation with an applicant who declares something on their criminal record.

- 8.2.5 Employers should in all cases, balance the risks associated with a criminal offence with the wider range of information obtained at the application, interview and pre-employment checking stage before making their final recruitment decision.
- 8.2.6 All discussions must be recorded on file; alongside clear reasons reached to appoint or reject the applicant. Information should be stored securely in line with the DBS code of practice and in accordance with data protection and GDPR requirements.
- 8.2.7 Information about an applicant's criminal record should not be disclosed to anyone other than those who have a legitimate reason to know. This may include people directly responsible for the recruitment decision or the applicant's line manager, if the offence has a bearing on their suitability to continue in their current role.

### 8.3 Discrepancy in information provided

- 8.3.1 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. [Model declaration form A](#) and [model declaration form B](#) will help you to ask the right questions, at the right time and seek confirmation that individuals have understood what information is required of them, or have taken opportunity to seek advice, if that is not the case.
- 8.3.2 If there are significant discrepancies between the information the applicant has provided and that contained in any subsequent DBS check, it is important for the employing organisation to establish why this might be the case. The [DBS](#)

[code of practice](#) states that an employer should conduct a meeting to discuss any new matters including other relevant information revealed in the DBS check with the applicant in a face to face meeting, prior to making a final recruitment decision. Any discussion must be handled sensitively and fairly without pre-judgement.

- 8.3.3 Given the complexity of the criminal justice system, it is easy for applicants to misunderstand what offences might be on a criminal record or the implications of those when applying for employment until a DBS check is conducted.
- 8.3.4 If it becomes clear from the additional information provided that the individual is unsuitable for the role being offered, then the employer will need to follow the organisations local policy on managing the withdrawal of an offer of appointment in consultation with the HR department.
- 8.3.5 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](#).

# 9. Legal duties to refer to the DBS

- 9.1.1 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.
- 9.1.2 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.
- 9.1.3 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.
- 9.1.4 If you are unsure of your duties or how to make referral, further advice can be obtained by calling the DBS helpline on 03000 200 190.

# 10. Storage, retention and disposal of records

10.1.1 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.

10.1.2 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.

10.1.3 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.

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

# 11. Checking authenticity of disclosure certificates

11.1.1 Criminal record disclosure certificates contain several security features (as below) that can be used to verify whether a disclosure has been counterfeited or altered in any way:

- 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.

11.1.2 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.

11.1.3 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 helpline 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 and cautions 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 most 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 and cautions 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.

These rules were updated on 28th November 2020 as follows:

- Warnings, reprimands, youth cautions and youth conditional cautions will no longer be automatically disclosed on a DBS certificate.
- The multiple conviction rule has been removed, meaning that if an individual has more than one conviction, regardless of offence type or time passed, each conviction will be considered against the remaining rules individually, rather than all being automatically disclosed.
- 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 3](#).

## 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 persons in receipt of health services.

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'

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.

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

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 a representative who receives payments under regulations made under the Social Security Administration Act 199.
- 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.

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.

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<sup>1</sup>.

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.

- Providing any form of teaching, training, instruction, assistance, advice or guidance on their emotional or physical well-being.
- 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).
- Face-to-face contact with adult residents in a care home.
- Representing or providing advocacy on behalf of a statutory service and has contact with the adult.
- 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.
- 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

---

<sup>1</sup> 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.

permit the individual to have contact with adults who are in receipt of a health, social care, or specified service.

- People who are specified office holders (see definition below).
- 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:

- 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.
- Providing any form of teaching, training, instruction, assistance, advice or guidance on their emotional or physical wellbeing.
- 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).
- Providing transportation of wholly or mainly for children and their carers or guardians to and from places where they will be

receiving/or have received health care services. This excludes taxis which can be contacted and used by the general public.

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

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

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

# Appendix 3: Filtering Rules

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.

Filtering rules were first introduced on 29 May 2013 when amendments were made to legislation that affected both what an employer can ask an individual in relation to convictions and cautions, and what is disclosed on a Standard or Enhanced DBS certificate.

These rules were updated on 28 November 2020 following a Supreme Court judgement in 2019 that found the statutory schemes for the disclosure of criminal records were disproportionate in two respects. The first was in relation to the rule that, where a person has more than one conviction of whatever nature, all convictions must be automatically disclosed in a criminal record certificate – irrespective of the nature of the offences, their similarity, the number of occasions involved, or the intervals of time separating them. The Judges held that this rule could not be regarded as a necessary or proportionate way of disclosing criminal records indicating a tendency to offend.

Secondly, that the statutory scheme was disproportionate in the way it dealt with warnings and reprimands given to young offenders. They considered that such warnings and reprimands had a wholly instructive purpose and their use as an alternative to prosecution was designed to avoid any damaging effect on the young offender's subsequent life. It followed that disclosure to a potential employer would be inconsistent with that purpose.

As a result of the Supreme Court judgement, the filtering rules were updated on 28 November 2020 as follows:

- warnings, reprimands, youth cautions and youth conditional cautions will no longer be automatically disclosed on a DBS certificate
- the multiple conviction rule has been removed, meaning that if an individual has more than one conviction, regardless of offence type or time passed, each conviction will be considered against the remaining rules individually, rather than all being automatically disclosed.

## How it works

Filtering 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 do not 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 when it meets the following three conditions:

- Eleven years have elapsed since the date of the conviction.
- The conviction did not result in a custodial or suspended sentence (any conviction resulting in a custodial or suspended sentence will always be included).
- The conviction does not appear on the list of specified offences relevant to safeguarding.

Adult cautions 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 number 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 when it meets the following two conditions:

- The conviction did not result in a custodial or suspended sentence (any conviction resulting in a custodial or suspended sentence will always be included).
- The conviction does not appear on the list of specified offences relevant to safeguarding.

Youth cautions and youth conditional cautions are no longer automatically disclosed on a DBS check as a result of changes to the filtering rules in November 2020.

The DBS has 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 ensuring any information they may require as part of a request for a self-disclosure, application form, or during the interview process is in line with [Ministry of Justice guidance on self-disclosure](#).

NHS Employers  
2 Brewery Wharf  
Kendell Street  
Leeds  
LS10 1JR

0113 306 3000  
[www.nhsemployers.org](http://www.nhsemployers.org)  
@NHSEmployers

If you require this publication in an alternative format,  
please email [enquiries@nhsemployers.org](mailto:enquiries@nhsemployers.org)

NHS Employers is a part of the NHS Confederation.  
© NHS Confederation 2022. You may copy or distribute this work,  
but you must give the author credit, you may not use it for commercial  
purposes, and you may not alter, transform or build upon this work.

Registered charity no. 1090329