

Importance of using the right form

Questions 1-4 in each of the forms relate to information about a person's criminal record history. They are worded differently because legislation under the DBS regime defines what you can ask and consider, depending on the type of role you are recruiting to and its eligibility for different levels of DBS check. Asking applicants to complete the correct form is therefore essential to ensure you only seek and consider information you are legally permitted to consider.

- **Model declaration form A** - should only be completed by applicants applying for NHS positions which are excluded from the provisions set in the Rehabilitation of Offenders Act 1974 (known as an **Exempt** position).

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 and cautions that are not protected (i.e. eligible for filtering) under the Exceptions Order (as amended).

In January 2019, the Supreme Court made a ruling which led to amendments to the Exceptions Order of the Rehabilitation of Offenders Act in regard to what criminal record information is now protected and under what circumstances. These amendments are set out in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2020 and the Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2020), and in the new guidance from the Ministry of Justice. This guidance is in effect from 28 November 2020.

Under the new rules, there is no longer a requirement for the automatic disclosure, either by individuals or the DBS of youth cautions, reprimands and final warnings. In addition, the multiple conviction rule has been removed, which required the mandatory disclosure of all convictions if there was more than one on record for a person.

More information about protected convictions and cautions can be found in the criminal record check standard on the NHS Employers website.

- **Model declaration form B** - should be used to seek a self-declaration from applicants applying for any NHS position that is identified as being covered by the Rehabilitation of Offenders Act 1974 (known as a **non-exempt position**) 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 and 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 the NHS Employers website.