Frequently asked questions on employment checking requirements (revised 18 November 2013)

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Questions and answers

**General questions about the standards**

Q: When did the standards come into force?

The mandate for employment checks in the NHS (in England) was issued by the Department of Health under Health Circular HSC2002/008 in May 2002. The NHS Employment Check Standards were first published in March 2009 replacing previously issued guidance 'Safer Recruitment - a guide for employers'.

Q: How often are the standards reviewed?

The standards have been periodically reviewed in consultation with key partners to assure they are kept up to date with policy and legislative requirements and they remain fit for purpose.

The latest version was published in July 2013. Alerts to any changes are published in the NHS Workforce Bulletin; it is therefore recommended that employers register to receive this publication to ensure they remain fully compliant with current requirements.
Q: Which organisations do the Employment Check Standards apply to?

All NHS providers (including NHS organisations and private providers) are required to be registered with the Care Quality Commission (CQC) and, as part of this registration are required to comply with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009, which includes ensuring that robust recruitment processes are in place. NHS providers should therefore provide evidence of compliance with the NHS Employment Check Standards as part of the CQC’s annual regulatory framework.

The Employment Check Standards also form part of the information governance and assurance standards regarding the use of the NHS Care Record Service.

Q: Who do we need to check?

The NHS Employment Check Standards apply to the appointment of all staff within the NHS regardless of their position or term of contract. This includes permanent staff, staff on fixed-term contracts, volunteers, students, trainees, contractors, highly mobile staff, temporary workers (including locum doctors), those working on a trust bank, and other workers supplied by an agency.

Trusts using agency, contractor or other external bodies to provide services must ensure, through regular audit and monitoring, that their providers comply with these standards.

The exception to this, is the requirement to undertake criminal record and barring checks through the Disclosure and Barring Service (DBS) which only applies to those individuals who are in positions that are defined as eligible under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) - see further details about eligibility under the ‘Criminal Record and Barring Checks’ section below.

Q: How do these requirements apply to temporary or contracted staff?

The NHS Employment Check Standards are also embedded within the Government Procurement Services’ (GPS) National Agency Framework Agreement for agencies and contractors. This means that agencies and contractors on a Framework Agreement have to give assurances that adequate pre-employment processes are in place as part of the GPS’ auditing and monitoring of those organisations.

Ultimately, the responsibility for assuring pre-employment checks are undertaken lies with the employing organisation. Therefore employers appointing staff from an agency, or other external body to provide NHS services will need to ensure that these providers are in full compliance with the Employment Check Standards as part of their routine monitoring and auditing of those contracts.

Requirements should cascade from contract to sub-contract. Any contract with an employment agency should include:

- details of the level and type of the checks required for different posts
- a statement to the effect that the agency:
- will not receive payment for their services unless they provide staff that have been adequately screened
- will be liable for financial penalties if it is discovered that staff have not been adequately screened

• a statement to inform the agency that the contracting authority (the employing organisation) retains the right to audit their screening process at any time

• a statement which outlines that the agency must inform the contracting authority (the employing organisation) if the contractor is no longer registered/employed by them, is undergoing disciplinary procedures, or is charged or arrested of a crime.

For advice specific to appointing agency staff, see our guide to 'understanding employment checks for agency staff'.

Q: What is the definition of a contractor?

For the purpose of these standards, contractors are defined as individuals who are not employees of an NHS organisation but who have a direct or indirect contractual relationship to provide NHS services to that organisation. Contractors may therefore be engaged to work within an NHS organisation through a third party organisation.

Q: How should employers record these checks once they have been undertaken?

NHS employers should carry out all pre-appointment checks in compliance with data protection, human rights and equality law.

Information should only be obtained where it is deemed essential to the recruitment decision and kept in accordance with legislation as mentioned above. Employers should record the outcome of all pre-appointment checks using the Electronic Staff Register (ESR) where available, or other relevant HR management system.

Employers may find it useful to refer to the Department of Health's guidance 'Record Management NHS Code of Practice' which outlines the retention periods and requirements for storing personnel and work health assessment information.

Q: What checks are required for staff transferring under TUPE?

Although an individual's terms and conditions transfer under the protection of TUPE rights, the employing organisation carries the liability for obtaining written assurances which verify that the previous employer has carried out relevant checks in compliance with the NHS Employment Check Standards. Where such assurances cannot be sought, then additional checks may be required.

Employers should pay particular attention to any legal requirements to undertake identity checks, right to work checks - in relation to ensuring that individual's have the right to remain and work in the UK, and in meeting DBS requirements in relation to ensuring that those moving into eligible positions have appropriate criminal record and barring checks - especially those individuals who may have been employed prior to criminal record checking requirements become a mandate in the NHS in 2002, and who have never been checked.
It is strongly recommended that employers seek legal advice for further information about the requirements under the Transfer of Undertakings (Protection of Employment) Regulations which came into force on 6 April 2006 – a guide for employers, employees and representatives can be found on the Department of Business Innovations and Skills (BIS) website.

**Q: Do NHS organisations need to undertake their own pre-engagement checks before a researcher can undertake activities within that organisation?**

For researchers processed through the Research Passport System, the Higher Education Institution (HEI) should undertake the necessary pre-engagement checks. In such cases, employers hosting the researcher's activity can accept the individual's Research Passport as written confirmation that appropriate checks have been undertaken.

A Research Passport is not required for an NHS-to-NHS arrangement - see further details below.

Once the completed Research Passport form has been validated by the host employer, the checks may be relied upon for the duration of the research activity, or for up to a maximum of three years, whichever is the longest period. Further checks would only normally be required where there is a change in research activity - for instance where roles and the level of contact with vulnerable groups change and a higher level of criminal record check clearance is required, or the individual has limited leave to remain in the UK.

Where there is any uncertainty about the validity of a Research Passport, or the appropriateness of the pre-engagement checks conducted, you should liaise with the researcher and their HEI to clarify any issues. Where deemed necessary, you may request new or additional checks be completed however, such requests must be commensurate with the role of the researcher, the type of research they will be undertaking, and your duty of care.

**NHS-to NHS arrangements for research**

Where the researcher holds a substantive NHS contract of employment, or is a clinical academic with an honorary clinical contract with an NHS organisation, the responsibility for ensuring that appropriate pre-engagement checks have been undertaken rests with the individual’s substantive employer. Before the researcher begins any activity within your organisation you must obtain written assurances from their substantive employer that all pre-engagement checks that are relevant to the activities they will be undertaking, have been completed in line with the NHS Employment Check Standards.

Where written assurances cannot be obtained, or there is uncertainty about the assurance received, you should liaise with the researcher and their substantive employer to clarify any issues. Where deemed necessary, additional checks may be undertaken by the employing organisation.

At a practical level, to ensure that the individual who presents themselves is the one to whom the Research Passport and associated employer assurances relate, you should ask the researcher to report on their first day of activity with an acceptable form of photo ID.

For more detailed guidance please refer to the National Institute of Health Research (NIHR) website.
Q: Will any amendments to the employment check requirements be reflected on NHS Jobs2?

Employers should refer to the NHS Jobs communication website for the latest user information on the new enhancements to NHS Jobs 2.

NHS Jobs also sends emailed communications out to all system administrators within NHS organisations to ensure that they are kept in the loop with regard to any pending changes to the system.

Q: When is NHS Jobs2 likely to be launched?

At this current time we are unable to advise employers of an exact launch date for NHS Jobs 2. An announcement will be made at the earliest opportunity through the NHS Workforce Bulletin, as soon as we have a date confirmed by NHS Jobs.

Employers should regularly refer to the NHS Jobs website for further updates about timescales for the launch.

Use of the Electronic Staff Record (ESR)

Q: Is there any functionally to allow transfer of information such as references? This is a specific problem for junior doctors who regularly change placements and require a number of reference checks.

The transferral of references is not currently part of ESR functionality. If this were to become a requirement it would need both regional and national HR Special Interest Group support.

Q: Can all elements of the employment checklist be shared through the IAT at recruitment stage rather than the hire stage?

The only information transferred pre-hire are, the immunisations and check details and national statutory and mandatory competencies, where these are available. All other information will be transferred at the hire stage.

Q: Can an IAT which confirms employment history be used to comply with the reference standard?

The IAT process will transfer any previous employment history added by the previous organisation. IAT also includes the details of employment history from that employer, thus building up an employment history as employees move around the NHS.

The IAT Portable Data Set Report can be printed once all data has been transferred to the new trust at the hire stage which will confirm basic history - term of employment, period of employment and position(s) held which can be used to further validate what information you can obtain by seeking references directly from an employer which will give you a broader picture about an individual's skills, attributes and experience.
Q: Will ESR transfer as much information as possible in relation to employment checks, including criminal record checks through what was known as the e-CRB (now DBS) system?

The only CRB (DBS) data provided via the IAT process is given for information only on the pre IAT authorisation notification. Details relating the level of the disclosure, dates received and reference number are given so that the next employer can decide whether or not to accept the last employers DBS check (portability).

Q: We have a policy in place which requires periodic DBS checks, if we decide to record the history of DBS checks on ESR and run monthly reports thereafter to identify when staff are due to have a periodic check - will their names get duplicated or will it only report on the newest criminal record information?

Currently if you run a CRB (DBS) report, this will provide you with all historical CRB (DBS) records against a person. Users can export the data into excel and remove rows related to historical checks where necessary.

Q: ESR currently has interfaces between the GMC and NMC - are there further plans to include other regulatory bodies?

The NHS Professional Registration Interface has the capability to interface with any regulatory body who wishes to link their system with ESR.

Q: Should we be recording information about volunteers on ESR?

Organisations can set up volunteer records on ESR with the 'User Person Type' of 'Volunteer'. This may be particularly beneficial in that it gives access to the employment checks process. However, employers must ensure that they don't add any detail in the 'Payroll' field when inputting assignment details otherwise this is picked up as part of the ESR interface with HMRC.

The advice from the ESR Central Team is to firstly ensure that volunteer records are not attached to payroll unless expenses are to be paid. If this is the case then as long as there is no Tax or NI liability on the travelling expense payments, the organisation has the option to create a separate volunteer payroll using the dummy PAYE reference number ‘123/MCK’.

This workaround enables the organisation to pay expenses incurred to volunteer/s via the usual BACS system but will bypass the interface between ESR and the HMRC and its associated feed to the benefit offices. This does create additional processing so it is recommended that you refer to the ESR user manual on Payroll Set Up.

Q: When we have our NHSLA assessment, we need to provide evidence of professional registration. Can we evidence this by printing out the IAT?

There is no requirement to use IAT for this. The professional registration data related to the NMC and the GMC is updated for all employees via the professional registration interface.

The professional registration reports available from ESR hold all details relating to registrations data held against the person.
Q: Are there any proposals to add an interface with the DBS?

Yes. The Central NHS ESR Team are currently in discussion with the DBS.

To help NHS organisation to fully understand the new link between the Electronic Staff Record (ESR) and the DBS, the NHS ESR Central Team has launched a new information page on the ESR website and is also hosting three DBS webinars in early December 2013. Find out more about the webinars and how to take part here.

Q: When will the health clearance system be implemented?

The NHS ESR Central Team is working with Medgate, the Cohort System Supplier, to progress a pilot implementation of the OH Clearance (bi-directional) Interface. This work is planned into Quarter 1 and 2 of this calendar year (April 2013 onwards).

Further updates on progress of the pilot implementation will be provided in due course through your local ESR lead.

Q: Will NHS Jobs2 interface with ESR?

ESR will link with the new NHS Jobs service due to be launched later this year. The e-Recruitment Interface, which forges the link between the two systems, will go-live as part of the implementation of the new NHS Jobs solution. The interface will continue to operate in the same way as it does with the current NHS Jobs service, with no change on the ESR side.

The transition date for the new solution is yet to be communicated. Further information about the ESR plans to support the transition will be provided, once a go live date has been published.

Criminal record and barring check requirements

For ease of reading, please note that criminal record checks are now referred to as Disclosure and Barring Service (DBS) Checks which replaced the term CRB check from 10 September 2012.

DBS - update on changes to processes

Q: What is the Update Service?

The Update Service enables people to change roles and employers across sectors more quickly where they are working or volunteering with the same vulnerable groups, and the activities they are undertaking does not change the level of check required, without the constant need for a new DBS certificate.

A new check will always be required if the individual moves to another position or employer which requires a different level of check or clearances against a different barred list. For example, if moving into the education sector and their current DBS check does not include clearances against the children’s barred list, or if they are currently working in the NHS and
they have a standard level DBS check but are wanting to move into a role which will involve them undertaking a regulated activity and therefore this will require them to have an enhanced level check.

Q: When was the service launched?

The Update Service went live on 17 June 2013. From this date, anyone who is eligible for the DBS check, at any level, may subscribe to the Update Service. The DBS have launched two YouTube videos about the update service, one aimed at employers and another aimed at applicants.

As part of the launch there is also a suite of downloadable posters available on the website and an employer presentation and stakeholder presentation which can be used in any communications.

A number of other key changes were introduced to the DBS process at the same time - see question below for further details about these additional changes.

Q: What other changes came into force at the same time as the Update Service?

A number of other changes to the disclosure service also came into effect on 17 June. These include:

- Single applicant only DBS certificates - from this date DBS disclosure certificates will only be sent to the applicant, a copy of the certificate is no longer automatically sent to the Registered/Umbrella body.

  However, Registered/Umbrella bodies can request a copy of the applicant’s DBS certificate from the DBS in certain circumstances.

  See further details in the question below.

- Changes to how Registered/Umbrella Bodies complete Field x 61 ‘Position Applied For’ on the DBS disclosure application form.

  See further details in the questions below.

- The introduction of a new test of relevancy for the release of locally held police information as part of an enhanced DBS certificate which will be based on the type of workforce as opposed to the actual ‘job role’ as is currently the case.

- With the individual’s consent, Registered/Umbrella bodies can request information to find out if an individual's criminal or barring status has changed since their DBS check, indicating that a fresh check should be obtained.

Q: How do we access the Update Service?

Individuals

Individuals can subscribe to join the Update Service by going to the DBS website - a direct link has been provided here.
To track the progress of your DBS certificate application you can go to the DBS online tracking service.

Full guidance for applicants is also available on the DBS website.

Employers

If you are entitled to carry out a status check you can access information using the Update Service which can be found on the DBS website. After viewing the original DBS certificate, you will need to enter the name of your organisation, your forename and surname and then the following details of the DBS certificate being checked:

- DBS certificate number
- current surname of the DBS certificate holder - as specified on their DBS Certificate
- date of birth of the DBS certificate holder - as recorded on the DBS certificate.

Full guidance for employers on the use of the Service can also be found on the DBS website.

Q: Who will have authority to check information on the Update Service?

Organisations should nominate the most appropriate person/people within their organisation who should have access to this information, one of which may be the Counter-signatory. This may be done in advance and only once, rather than for each individual status check.

In all cases, the organisation's authorised person must seek the individual's permission to check their status using the Update Service.

Q: Is there a legal requirement for individuals to subscribe to the Update Service?

No. Subscription onto the new system is voluntary. There is no appetite for the Government to make this a legislated requirement in England at this current time.

Q: If there's no legal requirement for individuals to subscribe to the Update Service, what are the benefits in promoting this?

The Update Service is intended to improve the ease and speed with which employers can apply for criminal record checks and will create significant savings for the NHS, other healthcare providers and their staff.

Benefits for employees

In the majority of cases, this will mean that one DBS check is all individuals applying for eligible posts will ever need to have.

For £13 individuals who subscribe to this optional service when they apply for their first DBS check will be able to re-use their disclosure certificate whenever they change positions where the new role doesn't change the level of check required and they continue to work with the same workforce (children, adults, or both children and adults).
For those in volunteer roles the subscription to the Update Service and the DBS check will be free - see question on definition of a volunteer below.

The new service is likely to be most beneficial to those who are highly mobile such as doctors on training rotations, senior clinicians who hold a substantive post within one organisation but are required to provide emergency services or specialty expertise in another NHS organisation, temporary or bank staff, or those who wish to undertake a volunteering role in addition to any employment.

**Benefits for employers**

Where an individual has subscribed, the employer will not need to apply for a new DBS disclosure certificate but will be able to quickly perform an instant, online free check using the Update Service confirming whether or not the existing disclosure certificate is up to date.

The only time an employer will need to undertake a new check for those subscribed to the Update Service, will be if the online check reveals that new information has come to light since their original disclosure certificate was issued.

The DBS research which was conducted by Ipsos MORI* showed that 87% of employers surveyed said that the new service will speed up the recruitment process and save them time and money.

Potentially, the cost savings to the NHS is likely to run to hundreds of thousands of pounds. For example, a trust the size of the Royal Free London performing around 126 checks a year, could be saving over £2,700 per annum. Research also showed that 67% of employers stated that they would encourage new staff to join the Update Service as a part of their recruitment process, as well as existing staff who need to be re-checked at regular intervals. Where policies to undertake periodic checks are in place, free access to undertake online status checks will save employers either £26 or £44 for every re-check they would have otherwise performed. A health service recruiter, such as NHS Professionals performing around 11,000 checks a year, even if only half of those required to be rechecked in any one year, this would mean a saving of £242,000 per annum.

*Figures have been taken from the DBS press release issued on 17 June 2013.

**Q: How much will the fee be to subscribe to Update Service?**

Individuals can choose to join the service for an annual subscription fee of £13 which is considerably less than having to pay for a DBS check each and every time they change jobs.

Volunteers will be able to subscribe to the Service for free (see further information on this below).

**Q: Who has responsibility to pay for a DBS check?**

The requirement for a DBS check has always been regarded as an employment requirement and because of this, the majority of employers across the country agreed to put in place arrangements to either pay the fee for DBS certificates on the individuals behalf or to reimburse individuals for this fee. This is similarly replicated within the NHS in Wales, Scotland and Northern Ireland and across Sectors. The recent changes to DBS processes does not require employers to review these arrangements.
Employers have local discretion on this matter but any shift from current best practice will need careful consideration, including risks to the ability to recruit if neighbouring trusts decide to continue to pay for DBS checks, especially in hard to recruit areas; and the impact on staff - particularly if introducing new policies in relation to periodic or retrospective checks. It is therefore strongly recommended that any such considerations be done in consultation with Staff Side.

Employers who have arrangements in place to pay for DBS certificates may be interested to know that new provisions were introduced from 10 June 2013 which provides relief from income tax where employers pay or reimburse fees for subscribing to the DBS Update Service, and/or the fee for DBS disclosure certificates when applicants become subscribed to the Update Service (see question below for further details).

If you are an umbrella body (undertaking checks on behalf of a number of organisations), it is important that you make individual's aware that there is an additional administrative charge for this service.

**Q: What is the tax relief on fees paid to the Disclosure and Barring Service (DBS)?**

Secondary legislation which came into force on 10 June 2013 provides relief from income tax where employers pay or reimburse fees for subscribing to the DBS Update Service, and/or fees for DBS disclosure certificates when applicants become subscribed to the Update Service.

Further information you can be found in the HM Revenue & Customs Tax Information and Impact Note at [http://www.hmrc.gov.uk/](http://www.hmrc.gov.uk/)

**Q: Can anyone access information on the Update Service?**

You must have a legitimate interest before you can access information on the Update Service, this would include employers.

However, you must be able to say 'yes' to the following questions before you can carry out a status check. If you answer 'no' to any question you cannot carry out a status check:

- Have you sought the applicant’s consent to obtain a status check?
- Are you legally entitled to require a standard or enhanced DBS certificate?
- Does the DBS certificate contain information which you are legally entitled to see such as barred list checks?
- If you are legally entitled to a barred list check, does the DBS certificate presented to you contain clearances against the relevant barred list check(s) required for the position being applied for i.e. does the individual have previous clearances against the children’s list, adults’ list, both or none?
- Is the DBS Certificate for the right workforce – to work with children, adults, or both? This will be indicated in the ‘Position Applied For’ section and will show which workforce has been used to determine the relevancy of any locally held police information.

**Q: Is there a fee for employers to access information on the Update Service?**
No. Those who have a legitimate interest i.e. employers, in obtaining status checks on individuals who subscribe to the service will have free access but will require the individual's permission to do so.

**Q: What information will I be able to see if I do a check using the Update Service?**

Only those who have a legitimate interest can access the system i.e. an employing organisation, where the applicant/employee/volunteer has provided permission for them to obtain this information by giving them their unique number which is issued to them on subscription to the Service.

The status check will give one of four responses when you log onto the system:

- the certificate is clear and there is no new information
- the certificate contains information but there is no new information
- new information is known
- details not found.

In all cases, employers must ask to see the original DBS disclosure certificate to make sure it is at the correct level for the position being applied for, and validate that it is a bona fide document using the same level of checks as they would for any other legal document presented to them.

**Q: When should individual's subscribe to the Update Service?**

Individuals will need to subscribe to the Update Service when they first apply for a DBS check. When you go through the Disclosure application process with the individual, you can do a number of things to help them join the Update Service at the earliest opportunity. The DBS have produced an Update Service checklist and application form reference receipt template to help with this process.

It is important to make sure that:

- the correct workforce and position is applied for in lines one and two of field x61 within the 60 character limit
- the applicant is directed to the DBS website to join the Update Service
- the applicant is provided with the Disclosure application form reference number or e-reference receipt so that they can immediately apply to join the Update Service and track the progress of their application online. (This will be an 'F' number on the paper application form or an 'E' number on the online form acknowledgement receipt - known as a 'crb003' if using e-Bulk)
- the DBS receives the disclosure application form within 28 days of the applicant joining the Update Service
- the applicant is made aware that if they join the Update Service using their DBS certificate number, they only have 14 days from the date the certificate was issued to
do so – with day one being the date of issue. It is important to emphasise to applicant's that they should not wait until the last minute to subscribe or they may run the risk of their subscription being rejected if not done within the allocated time frame.

Existing NHS staff may be encouraged to subscribe where any existing rolling programme to undertake periodic DBS checks has elapsed, as part of their application for a new DBS check.

It is important to stress that the service does not introduce any new requirements to undertake periodic or retrospective checks on staff, and any decision to undertake DBS checks on a regular basis continues to be down to local policy.

Q: Do we need to request that all doctors on rotational training programmes should subscribe to the Service?

For doctors being newly appointed on to a training programme for the first time on or after 17 June 2013, you should encourage them to subscribe to the Update Service when they apply for their first DBS check.

Doctors who are already part-way through their training programme should be encouraged to subscribe to the Update Service when their three-yearly DBS check is due to be renewed.

Q: Who has responsibility to make sure that individual continue to be subscribed to the Update Service?

It is the individuals responsibility to ensure their subscription doesn't elapse in much the same way as it is their responsibility to ensure that registration with a Professional Regulatory Body does not elapse.

As far as we understand it, the DBS will automatically send notification to the individual to check if their payment details remain correct before their subscription is due to elapse and in that, will prompt for the individual to either request to be removed from the Service (if they are no longer in employment or a volunteering role which requires a DBS check), or to give consent for renewal of their subscription. We are to assume that the individual will be given a time period by which they should take the appropriate action. However, employers may find it beneficial to prompt renewal due to the fact that if a person's subscription is allowed to elapse, they will no longer be able to conduct a status check, unless the individual has a further DBS check and re-subscribes to the Service.

Q: What is an applicant only certificate and what does this mean for employers?

Since 17 June 2013, the DBS no longer sends an additional copy of the DBS disclosure certificate to the employer/umbrella body who countersigned the DBS application form. This was intended to allow the applicant opportunity to check that the certificate is correct and to challenge any information disclosed, before showing it to an organisations making the suitability decision.

Employers should amend their recruitment processes to require individuals to present their DBS certificate to them at the earliest opportunity. You will need to follow the exact same principles as you do currently to check and validate all other forms of documentation required as part of employment checking process.
Q: Can employers request a copy of the disclosure certificate?

Employers may only ask the DBS for a copy of the applicant's disclosure certificate where all of the following conditions apply:

- the individual is subscribed to the Update Service; and
- you have carried out a status check which revealed a change to the DBS certificate; and as a result
- a new DBS check has been applied for as the result of a change to an existing DBS certificate; and
- the DBS issued the new DBS certificate to the applicant more than 28 days ago; and the applicant has not shown the employer their new DBS certificate.

Employers must not ask applicants to request a reprint of their DBS certificate in order to provide them with a copy, and the DBS have a right to decline any such request.

Q: Where applicant's a moving location, quite often they will have changed address before they receive the DBS disclosure certificate, in such instances is it acceptable for them to add the employers address as a 'care of' address in section b of the application form?

This should only be used in very exceptional circumstances, not least because the use of additional address can increase the application processing time. Redirection of the issue of DBS disclosure certification must only be done with the applicant's express consent. To add a 'care of' address without the applicant's knowledge or consent will leave you open to challenge under the Data Protection Act.

All organisations have a legal duty to be compliant with the Data Protection Act 1998. If an applicant believes their data has been compromised, they can contact The Information Commissioner's Office who can consider action against any organisation who has manipulated or misused personal data.

It is also important to state that redirection of the DBS disclosure certificate to an employer's address does not permit the employer to open the disclosure on the applicant's behalf.

Q: Why are we experiencing delays in receiving DBS checks?

During summer, the DBS introduced a number of significant operational changes which are explained in more detail within this document. These changes have had some impact on service delivery over the autumn months. In particular, some of the country’s police forces have struggled to cope with the changes to policy and procedure, and unfortunately, it didn't help that these changes arrived at a time of year when application volumes are high. As a result, a number of forces are experiencing backlogs in clearing applications within their usual processing timescales.

The DBS are working hard with the affected police forces to reduce the time that applications spend in the system. We have been assured that some of the affected police forces will begin to recover from November but not all, therefore employers may continue to experience
longer processing times in the run up to the New Year. We will continue to work with DBS colleagues to keep you updated on progress.

Submitting applications electronically using the DBS e-Bulk service will make a difference to turnaround times, this also enables you to find out immediately if a certificate has been issued ‘clear’ of any police information which allows you to make your recruitment decision at an earlier stage. Further information about which police forces are facing delays can be found on the DBS website. Progress on DBS performance will be communicated through the DBS newsletters.

Q: Can you explain the changes in relation to completing field x 61 on the disclosure application form?

Incorrect details being entered into this field (x 61) is one of the attributing factors which cause unnecessary delays in recruitment processes. It is therefore essential that you make sure that this question is completed correctly to avoid the application being rejected or the DBS requiring to contact you for further information.

The change to how you complete field x61 on the DBS disclosure application form came into force in June 2013 and is due to a new relevancy test for police forces when considering the release of non-conviction information about an individual i.e. cautions, warning and reprimands being used.

This information will now only be disclosed where it is relevant to the type of ‘workforce’ the individual is applying to work or volunteer in rather than the job role. This means that employers may accept DBS certificates when an individual moves from role to role, and employer to employer - providing that job is being undertaken within the same workforce and is at the correct level i.e. if an individual has an enhanced DBS with clearances against the adults barred list check, they can use that check for any role working or volunteering with adults, even if that is providing an activity outside of the NHS - for example certain work in social care.

To accommodate this change, the DBS has extended the ‘Position Applied For’ field (referred to as X61 on the disclosure application form) to include both lines of 30 characters on the application form.

Employers must now complete this field as follows:

**x61 Line 1:**

You will need to write in one of the following form of words to indicate the relevant workforce(s):

- Child Workforce
- Adult Workforce
- Child and Adult Work

There is also another option:

- Other Workforce
which should be indicated where the individual is not working with children or adults, this is not relevant to NHS positions, as the only eligibility for a DBS check is where they have access to patients in the course of their normal duties, and therefore should not be ticked on the form.

Failure to complete this field correctly may delay the application as the DBS will need to contact you for further information; it may also prevent the applicant from using their DBS certificate for future employment or volunteering purposes.

x61 Line 2:

You will need to enter a description of the ‘Position Applied For’. The description must not exceed 30 characters.

Further guidance about completing this section of the DBS application form for each ‘workforce’ has been provided on the DBS website.

Queries can be directed to their Customer Services helpline on: 0870 90 90 811 or by emailing the DBS at: customerservices@dbs.gsi.gov.uk.

Q: What is a home based worker/volunteer, as outlined within question 66 (x66) on the disclosure application form?

Incorrect completion of this question is another attributer to delays in checks being processed quickly.

To avoid problems, you must consider

- Where the applicant will carry out the main part of their duties while undertaking this role
- Whether these duties will take place in the applicant's own home or someone else's home.

  If the applicant will be providing services from their own home then you need to indicate 'yes' for x66.

  If the applicant will be providing services in a service users home then you must indicate 'no' for x66.

For example doctors/nurses/psychologists/physiotherapists may be asked to administer health care to people who cannot visit a surgery or health care centre, the activities they undertake will be in a service user's home not the health professional's own home therefore this is not a home based occupation.

If a healthcare professional has a surgery/practice which is located at their own home address, then employers will need to consider whether this should be classed as a home based occupation.

When a home based check is requested, the police consider any relevant information they have in relation to the address on the application form. If they deem necessary, they will release information as part of the DBS disclosure certificate which may not relate directly to
the applicant but about the people who live at that same address, or are known associates of the applicant, or visitors to the applicant’s home address.

While this information will be useful for employers who appoint people in home based positions, if you tick this box incorrectly you could find yourself in a situation where you have access to information you are not legally entitled to see, using this as part of any recruitment decision could cause challenges against fair recruitment and it would be difficult to demonstrate that you did not use this information to refuse an applicant employment or dismiss an existing member of staff applying for another post.

The police often contact the DBS to clarify whether certain posts should be regarded as 'home based' positions before they continue with their checks. This causes unnecessary delays in recruitment processes therefore it is essential that this box is not ticked without careful consideration.

**Q: Will DBS checks continue to be free for volunteers?**

Yes. Volunteers will continue to have free DBS checks. Equally, their subscription to the Update Service will also be free.

However, if they then move into paid employment, they will be expected to pay for their subscription when it next needs to be renewed.

**Q: What is the definition of a volunteer?**

The Police Act 1997 (Criminal Records) Regulations 2002 defines a volunteer as:

“A person engaged in an activity which involves spending time, unpaid (except for travel and other approved out-of-pocket expenses), doing something which aims to benefit some third party other than or in addition to a close relative.”

For DBS purposes, it is deemed that ‘unpaid’ means not in receipt of any payment including remuneration, allowance, financial benefit, payment in kind, or other means of support, in relation to that activity. The applicant must not:

- benefit directly from the position for which the DBS application is being submitted
- receive any payment (except for travel and other approved out-of-pocket expenses)
- be on a work placement
- be on a course that requires them to do this job role
- be in a trainee position that will lead to a full time role/qualification.

Inappropriate use of free-of-charge volunteer applications remains to be a recurring problem, it creates a financial burden on other fee-paying applicants, and it contravenes the DBS registered bodies conditions of registration. To avoid errors registered bodies should ensure applicants meet the DBS definition of a volunteer before answering ‘Yes’ to question x 68 on the application form.

The following examples may help you consider if a position qualifies for a free of charge disclosure:

**Example 1:** Sally has enrolled on a nursing pre-registration degree programme. One element of the course is to complete nursing placements in various NHS settings; for which she will receive credits towards her qualification. She will not receive any payments whilst on
these placements. Whilst Sally is not receiving a payment, she is gaining credits towards her qualification, which is a benefit, and therefore **does not** meet the DBS definition of a volunteer.

During a break in her studies, Sally applies to become a volunteer to support patients in an outpatient chemotherapy unit. This is not a requirement of her course, and she will not receive any payments. This **would** therefore meet the DBS definition of a volunteer.

If Sally had subscribed to the Update Service she would be able to use her nursing degree check for the volunteer role and would not need to apply for a new check.

**Example 2:** Mark has accepted a job as a healthcare assistant, initially on a three-month unpaid probationary period. Subject to successful completion Mark will become a paid employee. Whilst Mark is not receiving payment for the initial period, the successful completion of this probationary period could result in paid employment and therefore, it will benefit Mark financially and **does not** meet the DBS definition of a volunteer.

**Q:** How can we ensure the DBS certificate presented by the applicant is genuine?

A DBS disclosure certificate contains a number of security features which employers can use to verify its authenticity, details of which are provided on the [DBS website](https://www.gov.uk/dbs). If you are unsure whether a certificate is genuine or if you think that it may have been altered, you should contact the DBS customer services help line on 0870 90 90 811.

**Q:** What happens if their subscription elapses?

If their subscription is allowed to elapse then the account held on the Update Service will be closed and those who have a legitimate interest in obtaining information on that individual will cease to receive information. To re-subscribe the individual must obtain a fresh DBS check. It may therefore be in the best interests of the employer to prompt renewal of subscription.

**Q:** Where can we find more information about the Update Service?

The DBS have produced a number of fact sheets and are communicating directly with Registered and Umbrella Bodies. Further information can be found on their website at: [www.gov.uk/dbs](https://www.gov.uk/dbs).

We will continue to work closely with the DBS to provide additional clarity on the Update Service and will update this document accordingly. Any additional clarification will be communicated through our Workforce Bulletin.

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**Eligibility**

**Q.** Can you obtain DBS checks on all staff?

No. The [Exceptions Order](https://www.gov.uk/dbs) to the [Rehabilitation of Offenders Act 1974](https://www.gov.uk/dbs) lists the types of work, employment or professions on which you can legally obtain a criminal record check. To be
eligible for an enhanced level DBS check, the position must be included in both the Exceptions Order and in the Police Act 1997 (criminal records) Regulations 2002.

It is unlawful for any employer to obtain barred list information on anyone other than those who are working in regulated activity, as defined in the Safeguard Vulnerable Groups Act 2006, amended by the Protection of Freedom's Act 2012.

For other positions which do not fall under the Exceptions Order, employers may wish to consider requiring a basic level disclosure. A basic disclosure only includes information about an individual's 'unspent' or current convictions, reprimands or warnings. We recommend that these might be used for certain positions of trust, such as Chief Executive, or senior management positions.

Although the DBS are looking to extend their services to include this level of check in the future, currently basic disclosures can only be obtained through Disclosure Scotland which is the DBS equivalent in Scotland.

Further details about basic level disclosures can be found on Disclosure Scotland's website. When living and working or volunteering in England, you should obtain a standard or enhanced check through the DBS in Liverpool.

**Q: Will there be a prescribed list of positions which will require a DBS check, and at what level?**

It would be impossible to provide a prescribed list of positions which will require DBS check as the criterion for a check is based on activities and not a job title. Guidance will be produced to demonstrate scenarios when such a check may be required to help organisations make an informed judgement on eligibility and at what level.

**Q: What is the filtering system and when did this come into effect?**

New arrangements came into effect on 29 May 2013, which mean that certain old and minor cautions and convictions will no longer be disclosed in a criminal record certificate when you apply for a DBS check on or after this date.

This follows the judgement made by the Court of Appeal on 29 January 2013, which stated that the disclosure of all convictions and cautions in a criminal record certificate contravened with Article 8: Right to Respect for Private and Family Life, of the European Convention on Human Rights legislation.

The new arrangements are intended to provide individuals with the opportunity to leave behind mistakes made when they were young. You can find out more information in the Unlock guidance on the DBS Filtering Process.

**Q: Do these changes apply across all four borders?**

No. These changes relate to England and Wales only and are enforced by the following pieces of legislation:

- The Police Act 1997 (Criminal Record Certificates: Relevant Matters (Amendment) (England and Wales) Order 2013
Q: What do these changes mean?

The filtering system introduces a strict set of rules that must be satisfied before any decision is made as to whether information should not be disclosed in a criminal record certificate.

In relation to convictions committed by an adult, information will not be disclosed where all four conditions outlined below are met:

- eleven years have elapsed since the date of the conviction;
- it is not listed as one of the specified offences which must always be disclosed;
- it did not result in a custodial sentence; and
- the individual does not have more than one conviction.

Cautions issued to an adult will not be disclosed where:

- six years have elapsed since the date of that caution being issued; and
- where the caution does not appear on the specified list of offences.

In relation to convictions committed by individuals under the age of 18, information will not be disclosed where:

- five and a half years have elapsed since the date of the conviction
- it is not one of the specified offences which must always be disclosed
- it did not result in a custodial sentence; and
- the individual does not have more than one conviction.

Where the caution was issued to an individual under the age of 18, information will not be disclosed where:

- two years have elapsed since the date of issue; and
- the caution does not appear on the list of specified offences.

Police forces will continue to use their common law powers to share information which they reasonably believe to be relevant and which, in their opinion, should be disclosed within the criminal record certificate.

Employers should continue to apply for DBS checks in the same way as they do now. While criminal record checks play an important part of the recruitment and selection process, it should be recognised that they are only one of six checks which must be undertaken in the appointment of staff in the NHS. Employers should always use a holistic approach and make judgements on an individual's suitability based on the information they are able to gain as part of the whole recruitment process.

Q: Is the Home Office still intending to appeal against the Court's judgement?

Yes. The Home Office has asked the Supreme Court for leave to appeal against the Court's judgement and this has now been granted. Clearly safeguarding and public safety is paramount and the Home Office will be continually reviewing the system to ensure that it remains fit for purpose.
We will therefore continue to work closely with the Department of Health and the Home Office to provide further clarity. Further updates will be published in our [Workforce Bulletin](#) and on this website once further information is made available by the Home Office.

More detailed information about the filtering rules are available on the [Disclosure and Barring Service (DBS) website](#).

**Q:** If a member of staff has had a check when they first started employment but hasn’t had a check since and we want to request a re-check, can they refuse?

As outlined in the question above, there is no legal requirement for you to undertake retrospective or periodic checking and therefore any decision to do so, continues to be a local decision. All the law says is that organisations can require staff/volunteers to have retrospective or periodic checks. We would therefore strongly recommended that staff are notified of the trust’s policy to undertake checks after a specific period of time, and that any period of checking remains to be proportionate to risk.

It is essential that employers make certain that individuals remain eligible for the same level of check e.g. their roles and responsibilities haven’t fallen out of the definition of regulated activity and that the correct level of check is applied for.

The Government is intending to introduce a duty to check which will place a legal requirement on employers to undertake checks against the barred list for anyone in regulated activity. The date for this to come into force is yet to be confirmed by the DBS, but it is expected to be in line with the launch of the new online status update system. Further information will be issued by the DBS in due course and we will publish links to this through the NHS Workforce Bulletin and website.

**Q:** Currently we obtain a fresh criminal record check for any internal move, even if they already hold an enhanced criminal record check with relevant clearances, is there any guidelines around this?

There is nothing embedded within legislation which dictates how often an employer must undertake criminal record checks. Employers can undertake a criminal record check when an individual changes jobs. However, if someone is changing jobs because of promotion within the same department within the same organisation, or is changing wards or specialties but their roles and responsibilities and level of contact with vulnerable groups remains the same, and then you would not normally be required to undertake a further check.

If the individual has never had a check before because they were employed prior to the mandate to check came into force in 2002; or there is a specific concern about that individual's criminal activity; or the position requires a higher level of check or additional clearances against the barred lists - then a new check will be required.

Employers should make a risk based assessment against whether the new role makes any significant change to the individual's roles and responsibilities and level of contact with vulnerable groups which would require a different level of DBS check.

**Q:** Where individuals are likely to work on other wards/departments within our organisation, in addition to their substantive post, can we request a check which covers both the barred lists?
Where it is highly likely that individuals will be undertaking regulated activity with both adults and children as part of their normal duties then yes, we would recommend that you seek clearances against both lists from the outset to avoid any unnecessary duplication of checks.

**Q: Would GP practice managers fall under regulated activity?**

Yes. GP practice managers would be fall eligible under regulated activity and would therefore require an enhanced with barred list DBS check on the basis that they would be responsible for the 'day to day management or supervision' of doctors and nurses who carry out roles and responsibilities under the new definition of regulated activity - i.e. those who are providing health care either as, or under the direction of, health care professionals (see para 7(1)(a) of Schedule 4 to the Safeguarding Vulnerable Groups Act).

**Q: Would staff undertaking reception duties be eligible for a DBS check?**

Reception staff would not be providing a regulated activity and therefore employers must not ask for an enhanced with barred list DBS check on these positions.

The type of duties reception staff undertake, and the level of access to patients can vary quite considerably from trust to trust and practice to practice, employers may therefore wish to consider whether their activities meet the criteria for an enhanced without barred list or a standard DBS check.

**Q: Are there any requirements to check secretarial and administration staff?**

PA's/secretarial and administrative staff who are located in a separate building away from patient areas, or where any access to patients would be merely incidental i.e. where they would be required to pass through patient areas to get to their normal place of work for instance, are not in regulated activity and do not qualify for a standard or enhanced DBS check.

Where their normal place of work is on a ward area, then employers may wish to consider their activities for eligibility for a standard level DBS check.

**Q: Are staff/volunteers who work in the hospital shop/restaurant eligible for a DBS check?**

Once again this is determinable by the roles and responsibilities of the job. We've outlined some examples to demonstrate this below:

**Example 1:** Sara is involved in serving food on a ward and quite often is required to assist patients to eat because of their age, illness or disability. This would be regarded as regulated activity and therefore an enhanced with barred list DBS check would be required.

**Example 2:** Peter works in the hospital kitchen and is responsible for preparing meals, he does not have any contact with patients. This is not regulated activity and he would not be eligible for any level of DBS check.

**Example 3:** Debbie volunteers in a shop which is located in a public area of the hospital site selling confectionary and newspapers to patients and the general public. She does not require any level of DBS check, this is because she is not providing a specific service wholly
or mainly for patients and any contact she might have with patients would be incidental i.e. it would not permit any further access to patients than say, a visitor to the hospital site.

Q: Do pharmacists advising patients on their medication, meet the eligibility criteria for a DBS check and if so, at what level?

Any person who is a health care professional who provides healthcare is working in regulated activity and would therefore be eligible for an enhanced DBS check with barred list information. This includes all individuals registered with the General Pharmaceutical Council.

Q: Are Non-Executive Directors eligible for an enhanced with barred list DBS check?

It is highly unlikely that they would fall eligible for an enhanced with barred list check because they would not be delivering any kind of health care directly to patients. It could however, be argued that these positions would allow free access to patient areas and therefore employers may wish to consider whether the roles and responsibilities of the job would allow the type of access to patients which would entitle them to ask for standard check.

If however, these positions would only allow them to access patient areas but any contact with patients could only be regarded as 'incidental' i.e. no more access than say, a visitor to the hospital site, then even this level of check would be challengeable.

Employers may require a basic level disclosure on any such positions which, as already outlined, can currently be obtained through Disclosure Scotland. The decision to undertake basic level disclosures remains a discretionary one and subject to local policy.

Q: Are Chaplains eligible for a criminal record check?

This would depend on their activities. They may be eligible for standard checks if they have access to patients, or if they frequently provide advice or guidance wholly or mainly for patients then employers may wish to consider against eligibility for enhanced checks without barred list information.

Q: Our nursing staff are often required to work in schools, is there a requirement for them to have a further criminal record check to undertake this work?

No, there is no legal duty on employers that send nursing staff to provide services in a school environment to require repeat checks. The Department of Education’s (DfE) guidance for schools recommends that where a visiting worker undertakes regulated activity with children on a regular basis in a school environment, then the host school should obtain written assurance from the sending employer which confirms that an enhanced with barred list check has been obtained for that worker, and that they are not barred from working in a regulated activity with children. DfE guidance does not recommend that schools should repeat-check visiting workers who have already been checked by their employer, or who are escorted while on site.

Q: Can we undertake a check on staff that have access to data of a sensitive nature or patient identifiable data?
Individuals who purely have access to sensitive information or patient identifiable data are not undertaking a regulated activity and therefore employers must not ask for an enhanced DBS check with barred list information.

If however, they also have access to patients as part of their normal duties, then employers may wish to assess whether the roles and responsibilities of the job would meet the eligibility criteria for a standard level DBS check.

**Q: What level of check should we obtain for NHS emergency call staff (NHS 111)?**

Eligibility depends on the type of health-related advice and guidance they are required to give.

Where the advice they give is health care advice under direction or supervision of a health care professional, this would be a regulated activity and therefore an enhanced with barred list check would be required.

Call handlers who provide advice or guidance, but not under the direction or supervision of a health care professional, over the phone would be eligible for an enhanced DBS check without barred list information.

Call handlers who purely act as an information directory, such as giving contact details for health services to adults, or where they redirect calls through to a health care professional who then provides the health care advice or guidance to an adult, would not be providing healthcare under the direction or supervision of a health care professional and therefore would not be eligible for any level of check.

**Q: Are porters eligible for a check?**

Where they are transporting patients (from ward to ward, ward to theatre, and patient areas to a vehicle of transportation), then this would be a regulated activity (‘conveying’) and therefore will require an enhanced with a barred list check.

If they work in patient areas, but do not provide any of the activities as described above, then you may wish to consider whether their level of contact with patients would warrant undertaking a standard level check.

Where they have no patient contact or limited contact i.e. where they are transporting laundry, or may have incidental contact with patients, as described in the Q&A above, then no check would apply.

**Q: Do positions which fall under the Post Graduate Scheme, such as Finance, General Management, Human Resources and Health Informatics qualify for a DBS checks?**

As already outlined in the questions above, eligibility depends on the roles and responsibilities being undertaken and the type and level of contact this would allow with vulnerable groups. Individuals on a Post Graduate Scheme are highly unlikely to be delivering health care services. However, employers may wish to consider whether their level of access to patients would entitle them to a standard level disclosure.

For any such positions where there is no access to patients, or where any access to patients is likely to be purely incidental (no more than that of a visitor to the hospital site), then
employers may choose to make it their policy to require a basic level check. A basic level check may be obtained through Disclosure Scotland.

**Q: Quite often trusts access support from specialist doctors at short notice to help deal with emergency or complex cases, is there a requirement for them to recheck these individuals?**

Staff who are highly mobile, such as doctors and clinicians, who hold a substantive post within one trust but are required to provide support with emergency or complex cases at short notice, or to provide specialist training in another NHS organisation, are regarded as being in continuous employment and do not need a new DBS check each and every time they are asked to provide emergency cover. The employing organisation can accept written assurances from the individual's host/substantive employer that state that appropriate checks have been carried out at the correct level.

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### Duties to refer to the Disclosure and Barring Service (DBS)

**Q: Who has a legal 'duty' to refer?**

Under the Safeguarding Vulnerable Groups Act 2006 and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, the following groups to refer information to the Disclosure and Barring Service:

- Regulated activity providers (e.g. employer or voluntary organisations)
- Personnel suppliers (e.g. employment agencies, employment businesses, educational institutions such as medical schools)

**Q: Who has a legal 'power' to refer?**

- Local authorities
- Education and Library Boards (Northern Ireland)
- Health and Social Care Trusts (Northern Ireland)
- Keepers of registers (professional regulatory bodies such as the GMC, NMC etc)
- Supervisory authorities (inspectors such as CQC, Monitor)

**Q: When does an employer need to refer information to the DBS?**

Where a person/organisation has a legal duty to refer, there are two main conditions which should be met for a referral to be made, these are:

1) They have permanently removed a person from 'regulated activity' through dismissal or permanent transfer from 'regulated activity', or where they would have removed or transferred that person from regulated activity if they had not left, resigned, retired or been made redundant; and

2) They believe the person has:
(a) engaged in ‘relevant conduct’

(b) satisfied the ‘harm test’ (i.e. no action or inaction occurred but the present risk that it could occur was significant), or

(c) received a caution or conviction for a ‘relevant offence’ (see further details about relevant offences on the DBS website, or call the helpline as indicated below).

A referral should not be made when an allegation is first made. An investigation and evidence gathering should be first undertaken by the person or organisation that would normally refer to the DBS. This is in order to establish if the allegation has foundation, for example as part of an internal disciplinary process. Without evidence or substance to the claims, many allegations will be quickly closed down as there will be no foundation on which the DBS can proceed.

The DBS have provided a fact sheet about when to refer which is available on their website.

Q: Where can employers find out further information about making referrals?

If you are unsure about whether you need to refer, or need further information about the referral process, or relevant offences, further information can be obtained by telephoning or emailing the DBS helpline as indicated below:

Barring information helpline

Tel: 01325 953795 or email: dbsdispatchteam@dbs.gsi.gov.uk

Disclosure information customer services

Tel: 0870 90 90 811 or email: customerservices@dbs.gsi.gov.uk

Further information and FAQs can be obtained from the DBS website.

Q: Should employers make a referral to the DBS even if the person in question leaves before any investigation can be completed?

Yes. Employers have a duty to refer even if that person is no longer in their employment.

It is however, important to note that the DBS has no investigatory powers and therefore relies upon other evidence that it may gather. Employers should therefore complete their investigations as far as possible, even where the individual leaves before investigations can be completed, so that the DBS has enough substantiated evidence on which it can base its decision. The DBS referral form details what information employers need to provide, where this is readily available.

If additional information becomes available to an employer after making a referral, this should also be provided to the DBS. In all cases, the referral should be made using the DBS referral form and posted to the DBS enclosing all relevant information held.

Q: Should employers be referring to the Regulatory Body or to the DBS?
If the employee is in a registered profession, then the employer will need to consider whether they believe that individual may have breached their professional code of practice, and whether the matter is purely a professional issue, or a safeguarding issue, or both.

The legal duty to refer to the DBS remains irrespective of any referral being made to a regulatory body.

**Q: Who does the DBS share information with?**

It must be recognised by any party providing information to the DBS that it may be necessary for information to be disclosed by the DBS to another party. This may include (but may not be limited to):

- The individual themselves
- The police
- A relevant authority (e.g. probation/prison service)
- A supervisory authority (e.g. CQC, Monitor)
- A Keeper of Registers (e.g. GMC, NMC)

The DBS will only disclose information to any party where:

- There is a legal duty to do so
- In response to a request for subject access made by a person
- To allow a person to provide representations against information which the DBS intend to rely on when barring a person
- A Keeper of Registers, e.g. the GMC requiring the disclosure of information under their legislation for fitness to practice case.

Where a legal power exists, the DBS will consider the disclosure of information and will normally only disclose information for the purposes of safeguarding of children or vulnerable adults.

Whenever a disclosure is made to the DBS, the person or organisation providing the information should be aware that, under normal circumstances, the DBS will not contact them for permission to further disclose information. However, it is recognised that there may be occasions where information is particularly sensitive and the release of information may jeopardise:

- The prevention/detection/investigation of crime
- The apprehension/prosecution of offenders, or
- The safety/security /liberty/welfare of children or vulnerable adults.

Normally the sensitivity relating to the disclosure of information is time limited e.g. where a police investigation has not yet been concluded. It is important that the DBS is aware of any concerns relating to the disclosure of information in cases of particular sensitivity such as
those outlined above. In such cases, any party disclosing information to the DBS may highlight information of particular sensitivity. This will allow the DBS to contact the person/organisation who disclosed the information to gain a better understanding of any concerns and make an informed decision whether the information may be disclosed.

The DBS has produced a fact sheet on Data Protection and Security.

Q: What documentation must be provided by the employer when making a referral to the DBS?

As already mentioned, the DBS has no investigatory powers and therefore they rely on the information provided by other organisations.

Convictions, police cautions and the findings of specified competent bodies (e.g. GMC) are treated as facts in DBS decision-making.

They also consider relevant information which may be provided or requested from regulated activity providers, the police, personnel providers and regulatory bodies such as the GMC, as well as any relevant information already held in relation to the person from any previous referrals. This could provide evidence of cumulative behaviour indicating a safeguarding risk.

The type of information the DBS would expect to see in support of a referral from an employer might include:

- Minutes of disciplinary hearings;
- Witness statements;
- Dismissal/suspension letter;
- Adult social care or children’s service’s records in relation to any safeguarding investigation; and
- Details of any police involvement.

This list is not exhaustive. For further guidance on completing the DBS referral form and documentary evidence required, please refer to the guidance on referrals which can be found on the DBS website.

Q: Is there any further training which goes into greater detail about barring and referral duties?

Yes. The DBS provides a number of free information and training events to help you better understand your legal obligations and responsibilities within barring, referrals and disclosures. Sessions take approximately three hours and can be scheduled through the morning or afternoon. In the main these sessions are intended to cover:

- Background and current legislative changes
- Current statutory obligations of the DBS
- ‘Regulated Activity’, ‘Relevant Conduct’ and ‘Risk of Harm’
• The DBS decision making process and considerations
• Example Case Studies.

alternatively, the DBS can provide a more tailored session depending on your specific needs.

Please refer to the links below for further information on the DBS website:

DBS referral events
DBS counter-signatory events

Alternatively, please contact the DBS directly by emailing them at:
dbspartnerships@dbs.gsi.gov.uk

Identity

Q: Do we need to undertake ID checks retrospectively on staff who already work for us?

Not usually. Employers checking assurance against information governance standards for the Registration Authority processes linked to the NHS Summary Care Record (NHS SCR) may involve undertaking a retrospective check, but requiring additional checks when staff change jobs internally should be proportionate to risk.

The outcomes of any verification of ID check should be recorded on ESR, where available, or other HR management system confirming that identity has been verified in compliance with the Verification of Identity Check Standard, to avoid any further unnecessary duplication of checks.

Q: The list of acceptable documents for proof of ID differs from that required by the DBS and checking right to work which causes delays and confusion - can't these lists be aligned?

The lists have been produced by the Cabinet Office, Home Office and, for the purpose of criminal record checking, the Criminal Records Bureau (CRB) now known as the DBS. The lists are used across all sectors and do not just impact on the NHS, and therefore any review would require a cross-Government approach.

The Home Office published their consultation on measures to reform the civil penalty scheme to prevent illegal working in June 2013. Included are proposed measures that will have an impact on the right to work checks you conduct and the documents you can accept as part of your employment checking processes. Further details can be found on our preventing illegal working page.

It should be noted that it may be necessary to have some variances in the documentary evidence required for right to work, verification of identity and DBS checks as these serve different purposes.
Further advice will be provided as soon as more information about any pending review is confirmed.

**Q: Can we accept a passport which has expired?**

For the purpose of checking identity all documentation must be original, valid and current.

**Q: What happens if the individual has recently changed their name and cannot provide documentation in their new name?**

Individuals may decide to change their name at any time and be known by this name without going through any official legal process. However, employers must only accept identity documents in the applicants' previous name where the individual is able to provide supporting documentary evidence of their name change because of marriage/civil partnership (i.e. marriage or civil partnership certificate), divorce/civil partnership dissolution (i.e. decree absolute /civil partnership dissolution certificate) or deed poll (deep poll certificate).

**Q: Why does it stress that employers can only accept UK birth certificates as proof of identity?**

This is because there are no national security markings that can be easily checked, like those on passports and driving licenses and forgeries can easily be obtained from the internet. Employers would have no way of verifying whether a birth certificate from any other country was bona fide.

**Using ID scanning systems**

*(Case study by Peter Absalom, Associate Director of Workforce Resourcing at Kings College Hospital NHS Foundation Trust)*

**Q: Does the scanner only work on British passports?**

No, it works on all passports and any other documentation that has a security watermark which can be seen under ultra-violet light, such a driving licences, certain ID cards etc.

**Q: How expensive is it to introduce this system?**

There are a number of systems available on the market and each has a different pricing schedule. As a general guide you would be looking at a cost between £5,000-£10,000.

To help put this into some kind of perspective, if you are found to be employing illegal workers you could face a £5,000 fine for each illegal worker you are found to employ so the cost is somewhat negligible.

**Q: How many systems units do you have in your organisation and what would you advise for an organisation that is spread across a number of sites?**
We currently have two office based systems and one portable system and have 'sign-on' days where applicants are sent to one location to have their documents scanned.

Q: How do you deal with applicants when you identify that their documents are in question?

Countries do occasionally change their passports, so you need to handle any challenge sensitively, just because it's unfamiliar to you, it doesn't necessarily mean that it is a fraudulent document so you need to double check with the UK Borders Agency (UKBA) to make sure the passport for that country hasn't changed. Partner organisations and/or your Local Counter-Fraud Service may well do this on your behalf.

We inform all applicants that any formal offer of appointment will be made once all the necessary employment checks have been undertaken which gives us opportunity to follow up with the relevant authorities if anything untoward comes to light.

All our recruitment literature clearly outlines that any legal documentation such as driver's licences or passports will be verified by using a scanner which we find is a deterrent. We are, of course, conscious that whilst this might alleviate the problem within our own organisation, it may well mean that the individual is likely to try a neighbouring trust that doesn't have scanning systems in place.

Q: Are you able to check other documents using this system?

It can be used to check a whole variety of documents that have security watermarks which can be seen under ultra-violet light. Our system is one of a number of systems now available on the market and technology is improving all the time so it's worth exploring before you commit to one system. Systems offer a wide range of scanning options which can be filtered depending on the level of checking you require. Some we've found hard to justify as necessary for recruitment purposes.

Q: Can you scan qualification certificates?

There are certain systems on the market that could probably do that, but we continue to use the old fashioned way by following up where necessary with the awarding body.

Q: Do you have a dedicated member of staff who undertakes your document scanning?

No, but we've only got a small team of six people who undertake checks.

Q: Do you check all applicants, or just those whose documentation may be of concern?

Yes, we check all applicants’ documentation.

Q: Have you introduced retrospective checking within your organisation and how does this work?

We are in the process of planning retrospective checking and aim to complete this exercise within the next financial year.
Q: Are you legally allowed to do all the checks that the scanning system offers or just the ones that are required?

There are some complex systems on the market and therefore you may decide to filter some of the functions. Clearly we take advice from our lawyers, NHS Employers, and follow all other relevant guidelines to make sure we stay within the law.

Work health assessments

Q: Why can't we ask applicants to fill in a health questionnaire?

The changes which came into effect from April 2010 under the Equality Act, were aimed at restricting the circumstances when an employer can ask questions about an individuals’ disability or health prior to them being offered employment (whether this be a conditional or unconditional offer of employment).

In practice, this means that it is unlawful to ask any such questions as part of your application process or during interview; it would also include referring the applicant to occupational health, or asking them to fill in a questionnaire provided by an occupational health practitioner prior to any offer of employment being made.

Q: What information can we obtain at the application stage?

Prior to any offer of appointment, employers can only legally ask applicants to make a declaration against one of the two questions outlined within the Work Health Assessments Standard. These statements are as follows:

1. I am not aware of any health conditions or disability which might impair my ability to undertake effectively the duties of the position which I have been offered.

2. I do have a health condition or disability which might affect my work and which might require special adjustments to my work or at my place of work.

The exception to the ruling around what questions can be asked prior to any offer of employment are outlined in Section 60 of the Equality Act 2010, and these in summary include where questions are being specifically asked for the purpose of:

- establishing whether or not reasonable adjustments are necessary to the recruitment process - for instance it remains lawful for employers to ask an applicant if they require any adjustments for the purpose of the interview, i.e. to allow ease of access to the building or interview room, or asking questions to establish whether the individual may have any special needs to enable them to undertake an assessment as part of the interview process. Where you need to ascertain whether or not the applicant needs any adjustment for the purpose of the interview, then this question should be asked by separate letter. Questions should not be included in the application form or used by the recruitment panel to make a decision on whether or not the applicant should be short-listed for interview;

- establishing whether or not the applicant can carry out a function which is intrinsic to the job being applied for - for example, where a health or disability related question
would determine whether or not such a person could carry out this function with reasonable adjustments in place, then such a question would be permitted. Any questions must be relevant to the position being offered;

- taking positive action in relation to disabled people - questions which ask if a person is disabled so they can benefit from any measures aimed at improving disabled people's employment rates is lawful. When asking questions about eligibility for any such schemes which help people with disabilities, employers should make clear that this is the purpose of the question;

- establishing whether or not the applicant has a particular disability that is a requirement for the job e.g. where a person with a particular impairment is a pre-requisite for the job. In such a situation, where an employer can demonstrate that a job has an occupational requirement for a person with a specific impairment, then the employer may ask about a person’s health or disability to establish that the applicant has that impairment; or

- employer's diversity monitoring, employers should ensure that any such information should be collected and recorded separately from any application.

There are very few situations where a question about a person’s health or disability would be considered justifiable prior to their appointment as opposed to a question about their ability to do the job being applied for, with reasonable adjustments in place.

The changes outlined within the Act do not make any amendment to requirements for health care workers involved in patient care, patient contact, or body fluid sample handling. This group needs to be treated slightly differently by having minimal screening together with the obligatory communicable disease questions. They do, however, still need to be asked to respond to the two statements set out above.

Employers may find it particularly useful to refer to the Code of Practice on Employment which can be found on the Equality and Human Rights Commission (EHRC)'s website which provides full detail about each of these circumstances.

**Q: Can we ask health related questions at the point of obtaining references?**

Where you have identified a successful candidate and you are obtaining references to follow up an offer of employment to validate your recruitment decision, then you may ask for information about that prospective employee's sickness. Any questions must be relevant to the job being appointed to and it is essential that information obtained through referencing is not used to discriminate against that person.

**Q: What information can we retain on file and should this be held on their personnel record?**

Any information obtained through the applicant or from previous employers/educational providers about medical history, such as sickness absence, relevant hospital admissions and medications must be with the applicants consent.

Once appointed, this information - including any relevant work health assessments/referrals, types of immunisations - dates issued/renewal dates, where relevant to their appointment - should be kept on their work health assessment record on ESR, or other relevant record.
system held and accessed by the Occupational Health Department. Any such information should not be recorded as part of their personnel file.

Q: How long should work health assessment information be retained for?


Q: The Work health assessment standard suggests that we can choose to refuse employment - how does this work in practice when the Equality Act emphasises that we need to make 'reasonable adjustments'?

As outlined within the Standard, no applicant should be refused employment on health grounds without expert occupational medical advice being sought, and all avenues to make reasonable adjustments have been fully considered in line with the Disability Discrimination Act 1995.

It is also essential that the applicant is given an opportunity to discuss any issues raised with an occupational health professional.

Employers can seek further guidelines on making reasonable adjustments can be found on the Equality and Human Rights Commission website.

Q: What would be considered reasonable adjustment?

The key aim of making reasonable adjustments is to remove, or reduce as much as possible, any significant disadvantages presented to an individual which would not affect a non-disabled person. This may include reviewing how the employment is structured, removal of physical barriers, and/or providing additional support for the individual. In the majority of cases, any adjustment would be inexpensive.

What is considered a reasonable adjustment will very much depend on a number of factors and employers will need to take into account:

- how effective the change will be in removing any disadvantage to the individual
- its practicality
- the cost
- organisational resources and size
- financial support available.

Q: What inoculations are required for different positions?

Employers will need to refer to guidance issued by Public Health England.

We would strongly recommend that employers work with their OH departments to determine what immunisations might be appropriate for each role based on what would be considered proportionate to risk - both in the relation to the health and wellbeing of the individual themselves and from any potential patient safety aspect.

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**Employment history and reference check requirements**

**Q:** We are often challenged by applicants about the requirement to obtain references for a three year period, why is this required?

There is continual pressure from the Government in relation to increasing the number of years which need to be validated through seeking references. Three years is the absolute minimum period recommended by guidelines issued by the Centre for the Protection of the National Infrastructure (CPNI) guidelines - [Pre-employment Screening; a good practice guide](#).

**Q:** If obtaining references isn't a legal requirement, why is so much emphasis placed on them?

Whilst employers do not have a legal requirement to provide you with information other than to state employment dates, position held etc., the importance of references should not be ignored. The broader the picture you can build up about an individual's employment or training history, the better.

Previously there has been an over-reliance on the information gained through seeking a CRB check, now known as a DBS check, and an assumption that if an individual has a clear criminal record they are deemed suitable. As well as confirming previous periods of employment or training, references are intended to pick up issues relative to conduct, behaviours and suitability for the position being appointed to.

**Q:** How useful are character/personal references?

Wherever possible, you should always try and obtain employer references but where the individual is genuinely unable to provide these, and then character/personal references can be a good way of building up a picture of an individual's reliability, integrity, and life/social skills and experiences.

Character and personal references can also be useful to support employer references where there's been a lack of information, or the individual has previously had a poor employment record, or has previously had a criminal record.

To ensure that what you get back is of value, employers might want to include specific questions to help the referee, such as asking how long they have known the individual concerned, in what capacity have they known them, what skills/experiences the individual has demonstrated that might be regarded valuable attributes for the position they are applying for - you might want to tailor these in terms of trying to satisfy any specific concerns you might have, if appropriate.

Character and personal references may be sought from professional acquaintances not related to the individual, and who do not hold any financial arrangements with that individual; professors/ academic advisors, or customers or clients if self employed.

If the individual has undertaken some form of volunteering work, then references may also be obtained from the charity body or other similar organisation, or if they have just left or are leaving full time education then references may be sought from the individual's professor, academic tutor or head teacher.
Q: Quite often applicants move around frequently and therefore over a three year period this can amount to a large number of references being sought leading to delays in recruitment, can you clarify what the minimum requirement would be?

Generally speaking, the main reason for frequent job moves is because the individual has either been working with an agency, or they have been on placement as part of a training programme.

Employers should make a judgement as to whether taking up references from all employers in that three year period is likely to provide additional information which is relevant and proportionate for the role being applied for.

Generally, in the case of an agency worker we would recommend that employers seek a reference from the agency; if the individual is on a training programme e.g. in the case of a doctor on rotational training, then the recommendation is that you obtain a reference from the host employer and previous clinical placement.

Any period which highlights a number of unexplained frequent moves should be further investigated in case there is some other underlying reason such as poor practice or disciplinary action.

Q: Is there a reference template recommended for use in the NHS?

The revised Employment history and reference check standard published in July 2013 provides a number of standard templates which may be used to obtain references - see Appendices at the back of the document.

Q: Can you clarify what references are required for work placements?

In the case of work experience/placements, we would recommend that you seek a reference from their academic institution e.g. professor, tutor or head teacher.

Q: Where do you go for a reference if the company they previously worked at is no longer trading?

Where you are unable to seek a reference from their previous employer because the organisation they worked for has since ceased trading, we would recommend that you seek references from their last known employer and a character/personal reference - preferably from a business acquaintance where possible.

Q: The standard makes reference to the use of a financial check, what is this?

Financial checks can provide details about many different aspects of a person’s financial background. Types of checks include:

- Credit information listed at the applicant’s current and previous addresses including County Court Judgements (CCJs), insolvencies, bankruptcies etc

- A credit history report from a credit reference agency

  UK Directors search, to ascertain whether the applicant holds any current or previous directorships or any disqualified directorships
Searches against the Financial Service Authority's (FSA) Individual Register and Prohibited Persons Register.

For sensitive positions, you may wish to include relevant questions on the application form such as ‘have you ever been the subject of a County Court Judgement (CCJ)?’

Q: Are financial checks mandatory in the NHS?

No. It is important to point out that interpreting the security implications of financial information is not straightforward and is not seen as a core aspect of pre-employment screening, it will require a far greater degree of judgement than the other pre-employment checks outlined within the NHS Employment Check Standards and is dealt with more fully in National Security Vetting and other specialised screening assessment methods.

Normally financial checks are carried out to investigate the financial background of potential employees who are being appointed into a position of trust e.g. chief executives, board director levels, or posts which involve the management or handling of organisational budgets and monies.

Financial checks may also be used to provide further confirmation of an individual’s address and, dependent on the type of check, can be used to check for a fraudulent past or bad habit such as gambling, drink or drug abuse.

Employers will need to make judgement as to whether a financial check is appropriate for the post being applied for against the roles and responsibilities of the job, and identify any risks of fraudulent activity against the organisation.

Q: How do you obtain a financial check?

Enquiries may be conducted in a number of ways including:

- as part of an electronic identity search whereby a number of companies can run a search on an individual’s details across financial service/credit databases. Which, combined with verifying a applicant’s identity, enables the employer to discover any relevant financial data held against the individual’s details
- credit reference agencies can provide individual credit reports
- commercial pre-employment businesses can offer financial reports either as a stand alone report, or combined with other services such as identity, employment and qualification searches.

There are three main credit agencies that make available public information such as Electoral Roll, County Court Judgements (CCJ), and payment history data. These are:

- Experian [www.experian.com](http://www.experian.com)
- Equifax [www.equifax.com](http://www.equifax.com)
- Call Credit Ltd [www.callcredit.co.uk](http://www.callcredit.co.uk)
Q: Can you employ someone who has financial debt?

It is essential to point out that debt in itself does not necessarily present a security problem, depending on an individual's circumstances and their ability to repay the debt. If there are concerns, such as defaults, bad payment history or CCJs, employers must sensitively discuss these with the applicant before making any judgement as to whether allowing them to take up the position being applied for would pose any risks to the organisation.

Q: Is it appropriate to ask for payment for providing employer references?

Charging to provide employer references is not in line with normal NHS practice, nor would it be recommended as good practice. Employers may adopt a policy of providing a bare minimum reference i.e. confirming employment dates and the position held etc. However, if this approach is adopted, the policy should be applied and communicated to all employees.

Q: To what degree should we call the awarding body for verification of qualifications - is it only if we doubt them or for every certificate we see?

Employers are only required to verify qualifications which are a pre-requisite for the job being applied for.

Q: Can we accept relevant vocational experience over and above any essential qualifications, if the candidate doesn't possess these qualifications?

Most job specifications will identify essential criteria which outline any 'must have' qualifications, skills and experience required and desirable criteria which allows for some flexibility. Whilst, there is nothing stopping you from accepting vocational experience over and above any formal qualification, it is strongly recommended that this is agreed prior to going to advert with HR to ensure a fair and consistent approach to your recruitment process.

Q: Where appointing someone who has already had checks undertaken as part of their registration with a professional regulatory body, are we required to see and verify their qualifications again?

In the main, where qualifications have been checked by a professional regulatory body and the individual's registration has been confirmed, then further documentary evidence about qualifications that are relevant to their registration would not be required. Where the job specification requires other qualifications then it would be necessary for you to check and validate these.

It should be emphasised that liability for individual falls to the employer and therefore you may wish to check and validate these separately as a matter of good practice. Where accepting that registration with a professional regulatory body assumes that appropriate
documentary evidence has been provided and validated, employers must verify that the individual is actually registered with that regulatory body, that there is no restrictions to their registration, and there are no pending investigations on their fitness to practice.

Q: How can we find help to validate qualifications that have been obtained from overseas?

If the applicant has gained their qualification overseas then there is a requirement for employers to check that the qualification exists; it's equivalence to a UK qualification, if any; and validate that the individual seeking employment is actually the holder of that qualification.

Wherever possible, checks should be carried out directly with the awarding body. Where this is not possible, further advice may be sought from the relevant country's UK embassy, consulate or high commission. Further advice on how to do this can be found on the Foreign and Commonwealth website.

Q: Who should I contact if I have any doubt about a qualification being genuine?

Where you have any doubts about whether an overseas qualification is genuine, or its equivalence in the UK, further information can be obtained through the UK National Academic Recognition Centre (UK NARIC). UK NARIC is the national agency responsible for providing information, advice and expert opinion on vocational, academic, professional skills and international qualifications to organisations recruiting from overseas and to individuals wishing to work or study in the UK.

Right to work checks

Q. Training rotations often run over the period of three years by three to four days, but the Sponsorship Management System (SMS) restricts us from assigning a Certificate of Sponsorship for any period exceeding three years. Will we need to apply for a further visa to cover the additional days?

No. Leave will be granted for up to 14 days after the end date of their Certificate of Sponsorship (CoS) and therefore they will still be able to work during this time.

Q. If a person is moving from Foundation Programme (under Tier 4) to take up a post under Tier 2, can this can be done in country?

Individuals will be able to switch in country from Tier 4 to Tier 2. More information for doctors in training can be found on our medical and dental posts webpage.

Q: Doctors in training are appointed to a five or six year training programme and are quite often required to rotate to new employers every six to twelve months as part of their training. Do we need to apply the RLMT each time they move?
You *would not* need to apply the RLMT while they remain on the same training number and are applying to continue a training programme they have already started i.e. when rotating from employer to employer for the duration of the five/six year training programme - as they would be regarded as being in continuous employment during this period.

However, the RLMT *would* apply where an individual changes their specialty or programme and moves into a different role – i.e. where moving outside of the current SOC Code.

**Q: We recently lost a candidate as their Tier 2 visa was about to expire, how could we have prevented this?**

If employed with the trust then you can apply for an urgent CoS providing their application is made *before* the visa is about to expire and they can carry on working in their current job. New applicants are free to remain in country but can’t start work until their new visa application is approved.

**Q. Can we apply for an urgent CoS?**

The UKBA can prioritise CoS applications but *only* where a CoS is needed urgently because the individual’s leave will expire within the next 10 working days.

**Q. Can you apply for a Tier 2 visa for an honorary contract issued to do training?**

Yes, but if the post is funded by overseas government then no RLMT would apply.

*If your query is not covered within this document, please contact us at:*

[employmentchecks@nhsemployers.org](mailto:employmentchecks@nhsemployers.org)