

Criminal record and barring checks

September 2012

About the NHS Employment Check Standards

This document outlines the criminal record and barring checks NHS organisations (across England) must be aware of, and act upon, in the appointment and ongoing employment of all eligible individuals in the NHS. It also explains the changes in requirements under the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) for barring checks that come into force on 10 September 2012.

The NHS Employers organisation has developed these standards with the Department of Health(DH) and employers in the NHS. The standards include those that are required by law, those that are DH policy and those that are required for access to the NHS Care Record Service.

These standards replace all previous guidance issued by NHS Employers on safer recruitment and include the employment checks that NHS organisations must carry out to meet the Government's core standards, outlined within the *Standards for Better Health*. Since April 2010, all NHS providers (whether NHS organisations or private providers) have been required to register with the Care Quality Commission (CQC). Organisations registered with the CQC are required to comply with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009, in particular, the requirements relating to the recruitment of staff. NHS providers should show evidence of compliance with the *NHS Employment Check Standards* as part of the CQC's annual regulatory framework.

Failure to comply with these standards could potentially put the safety and even the lives of patients, staff and the public at risk.

The NHS Employment Check standards apply to all applicants for NHS positions (prospective employees) and staff in ongoing NHS employment. This includes permanent staff, staff on fixed-term contracts, volunteers, students, trainees, contractors, highly mobile staff and temporary staff supplied by an agency. Trusts using agency, contractor or other external bodies to provide NHS services must ensure, through regular audit and monitoring, that their providers comply with these standards.

Avoiding discrimination

Employers must not unlawfully discriminate in their recruitment processes on the grounds of ethnicity, disability, age, gender, religion and belief, or sexual orientation. To avoid discrimination, employers must treat all job applicants in the same way at each stage of their recruitment process.

Recording and protecting data

NHS employers must carry out all checks in compliance with the Data Protection Act 1998. Information should only be obtained where it is essential to the recruitment decision and kept in accordance with the Act. Employers must record the outcome of all pre-employment checks, using the Electronic Staff Record (ESR), where available, or an alternative HR management system. These checks are also part of the information governance and assurance standards linked to the use of the NHS Care Record Service (NHS CRS). For more details visit www.connectingforhealth.nhs.uk/systemsandservices/scr

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Introduction

The Criminal Records Bureau

The Criminal Records Bureau (CRB) provides access to police information across England and Wales. This includes information about criminal convictions, cautions, reprimands and warnings as well as local police information.

The CRB provides two levels of checks: standard and enhanced. There is a third level of check, a basic check, which is not currently offered by the CRB (see page 11 for further details). Information obtained through criminal record checks helps employers make informed decisions on whether or not to appoint a prospective employee. The decision always rests with the employer as to whether to employ a person whose criminal record check reveals a conviction or other information. The information provided should be carefully considered in light of the circumstances and judged on a case-by-case basis.

Criminal record checks

The Police Act 1997 (s113A) enables standard criminal records checks to be requested by employers on any individual who is working in a role listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) (“the Exceptions Order”), which includes any employment which is concerned with the provision of health services and which is of such a kind as to enable the holder to have access to persons in receipt of such services in the course of their normal duties. Standard checks include information on cautions, convictions, reprimands and warnings.

The Police Act 1997 (s113B) enables enhanced criminal record checks to be requested for the purposes prescribed in the Police Act 1997 (Criminal Records) Regulations 2002 (“the Police Act regulations”). Enhanced checks include information on cautions, convictions, reprimands and warnings as well as local police information.

Not all NHS staff are eligible for a criminal record check, it will depend if their role falls within the Exceptions Order. The level of check (standard or enhanced) is dependent upon whether the role then falls within the Police Act regulations. The Exceptions Order and the Police Act determine eligibility for a check and the level of check required but do not prescribe which individuals need to be checked. Eligibility is not determined by job title or type of contract, employers will need to make an assessment against the roles, activities and responsibilities of that particular post.

The Independent Safeguarding Authority

The Independent Safeguarding Authority (ISA) is an independent non-departmental public body set up by the Home Office to provide safeguarding arrangements for children and adults. The ISA has three main statutory duties:

- To maintain the two lists of individuals who are barred from engaging in regulated activity with children and/or adults (replacing all pre-existing lists – Protection of Children’s Act (POCA), Protection of Vulnerable Adults Act (POVA), List 99 and disqualification orders).
- To make discretionary decisions on who should be placed on the children’s and/or the adults’ list(s) where referred to the ISA.
- To reach decisions as to whether to remove an individual from the barred lists following review.

It is important that employers understand who within their organisation is working in regulated activity as you must not knowingly allow a barred person to work in regulated activity.

Duties to refer to the ISA

Employers have a legal duty to refer information to the ISA if an employee has harmed, or poses a risk of harm to vulnerable groups and where they have dismissed them or are considering dismissal. Employers also have a duty to refer where an individual has resigned before a formal decision to dismiss them has been made.

NHS organisations must take this duty to refer seriously in order to ensure unsuitable individuals are kept out of the workforce. Failure to refer is a criminal offence.

Further information about the referral process is available on the ISA website at:

www.isa.homeoffice.gov.uk

Safeguarding Vulnerable Groups Act 2006

The Safeguarding Vulnerable Groups Act 2006 was created in response to recommendations made in the Bichard Inquiry, arising from the Soham murders in 2002, and provided the legal basis to set up the ISA. The Inquiry questioned the way employers recruited people to work with vulnerable groups, and particularly the way background checks were carried out. The Act laid the foundation for the Vetting and Barring Scheme (VBS) and sets out the activities and work that are 'regulated activities'. These are the activities that a person who has been barred must not do.

In June 2010, the Government announced that the planned implementation of the VBS was to be halted because of concerns about the proportionality and bureaucracy of the scheme. A thorough review was undertaken with a view to scaling back the VBS scheme and the criminal records regime to common sense levels.

On 1 May 2012, the Protection of Freedoms Bill, which amends the Safeguarding Vulnerable Groups Act received Royal Assent and became an Act of Parliament, scaling back the VBS and the criminal records regime.

The Protection of Freedoms Act 2012

The Protection of Freedoms Act 2012 responded to recommendations made in Sunita Mason's review of the criminal records regime and the Government's review of the VBS. The published reports outlining the reviews' recommendations can be found on the Home Office website at: www.homeoffice.gov.uk/crime/vetting-barring-scheme/

Recommendation 6 of Sunita's phase 2 review highlighted the need for a single agency to provide combined barring and criminal records services. From December 2012, the CRB and ISA will be merged to create the Disclosure and Barring Service (DBS). This new organisation will provide a joined up service to combine the criminal records and barring functions.

The Act underpins the changes to the employment vetting scheme and criminal records regime. The changes will be phased in from September 2012, with further changes from December 2012, extending to 2014.

The impact of the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012

A number of changes come into force on 10 September 2012, with further changes being introduced subsequently. The most significant of these changes is that the definitions of regulated activity relating to children and adults will be amended to reduce the number of individuals falling within the definitions. In addition, the category of activities known as "controlled activity" will be abolished. Only individuals falling within the new definitions of regulated activity are subject to the ISA's barring regime. Please refer to page 12 for eligibility to apply for an enhanced and barred list check, and the revised definitions of regulated activity.

The Government's belief is that up to now these arrangements have over-emphasised protection by the State and did not sufficiently emphasise the vital role which employers play. Keeping people safe from abuse involves ensuring all staff are appropriately recruited, trained and managed.

Criminal record checks are only a small part of the pre-employment process and it is essential that employers have robust recruitment processes in place to ensure someone is suitable for a position in the organisation and abusive behaviour can be identified at the earliest opportunity. These processes should include obtaining references and conducting face-to-face interviews. For information about the checking requirements for the NHS, please refer to the documents covering: verification of identity, right to work, registration and qualification, employment history and references, and occupational health checks.

Rehabilitation of Offenders Act 1974, as amended

The Rehabilitation of Offenders Act 1974 provides for anyone who has been convicted of a criminal offence and has been sentenced to less than two-and-a-half years in prison, to be regarded as rehabilitated after a specified period of time where no further convictions have been committed. A rehabilitation period may vary from six months to ten years from the date of conviction. During this period the conviction is regarded as 'unspent' (current) and an individual is required to disclose this information to any prospective employer, or their current employer if the offence takes place during their term of employment.

Once this period of rehabilitation has passed, the conviction is regarded as 'spent' (old). In normal circumstances the convicted person does not have to reveal any 'spent' convictions to a prospective employer when applying for a job. However, in order to protect vulnerable groups, some professions and roles within the health and social care sectors are exempt from this approach under the Exceptions Order. In the case of these professions and roles, employers are entitled to know about all previous criminal record information, whether spent or unspent (including reprimands, final warnings, and cautions) and to take this information into account when assessing an individual's suitability for the post. Where it is deemed relevant to the position being applied for, the criminal record certificate may also include details about other information under the 'information released at the discretion of the Chief Officers as approved information' section on the certificate. This is referred to as a local police information.

The CRB code of practice

All organisations registered with the CRB, known as registered or umbrella bodies, must observe the *Code of Practice for registered persons and other recipients of disclosure information (April 2009)*. The code is designed to ensure that any criminal record information released, including information provided by the ISA, is used fairly and is handled and stored appropriately. In particular, employers are required to:

- treat all applicants fairly and without discrimination
- ensure that all applicants for eligible positions are notified in advance that criminal record information will be obtained
- have a written policy on the recruitment of ex-offenders that can be given to all applicants where criminal record information will be requested
- have a written policy on the correct handling and safe storage of criminal record information
- ensure that criminal record information is only supplied for the purpose of a recruitment (or other relevant) decision
- discuss the content of the criminal record certificate with the applicant before withdrawing any offer of employment
- ensure that they comply with CRB guidance on the portability of criminal record checks and their contents.

Handling and retention of criminal record information

All registered bodies must have a written security policy covering the correct handling and safekeeping of criminal record information.

Employers must ensure that information is kept securely in lockable, non-portable storage containers with access strictly controlled and limited to persons who need to have access to this information in the course of their duties. This information must only be used for the specific purpose it was requested for and with the applicant's full consent. Section 124 of the Police Act 1997 makes clear that it is a criminal offence to share criminal record information with any individual who is not entitled to receive it. However, if the applicant freely gives their consent to the sharing of this information, then an offence has not been committed.

Criminal record information should not be retained for any longer than necessary. Once a decision has been made as to whether to appoint or not, it should be kept for no longer than six months from appointment, and six months from where the applicant has been unsuccessful, to allow for the consideration and resolution of any disputes or complaints.

If, in exceptional circumstances, it is considered necessary to keep criminal record information for a longer term than this, employers should make a request to the CRB Data Protection Manager via dataprotection@crb.gsi.gov.uk to ensure this does not contravene with the data protection or human rights of that individual. Once this period has elapsed, information must be destroyed by secure means (for example, by shredding, pulping or burning). Safe storage and strictly controlled access must still be adhered to while documents are awaiting destruction. Employers should retain a record of:

- the issue date of the criminal record certificate
- the name of the individual
- the level of check requested, including any checks against one or both of the barred lists
- the position for which the certificate was requested
- the unique reference number of the certificate.

Copies of the code of practice are available on the CRB website at:
www.crb.homeoffice.gov.uk/

Disclosure information

The use of model declaration forms

Information obtained through the recruitment and selection stage is designed to prevent unsuitable people from gaining access to vulnerable groups, while at the same time respecting human rights and privacy issues and complying with the requirements of the Data Protection Act.

Employers may request criminal conviction information by issuing a self declaration form only where this can be justified in terms of the role being offered and where it meets the criteria for a criminal record check (see definitions and eligibility on pages 11). This should be obtained as late in the recruitment process as possible.

It is essential that employers make sure the applicant is fully aware that the position being applied for is exempt under the Rehabilitation of Offenders Act 1974; therefore you are entitled to seek information about both spent (old) and unspent (current) convictions.

The declaration relies on the honesty of the individual to provide complete and accurate information. Employers should make clear to the applicant that in completing and signing the self declaration form, the individual is giving their consent for the information provided to be verified by obtaining a criminal record check.

Employers should also clearly outline who the information will be disclosed to, what it will be used for, how it will be handled and stored, and the length of time it is likely to take to be processed.

Self declaration information must be handled, stored and destroyed in the same way as criminal record check information and should not be kept on file any longer than necessary.

The forms can be downloaded from the NHS Employers website at:
www.nhsemployers.org/employmentchecks

When to request a criminal record check

Once a provisional offer of employment has been made, employers may need to request a criminal record check (see section on eligibility on page 11). Employers are responsible for ensuring that criminal record application forms are completed correctly to avoid any unnecessary delays in processing. Further guidance and tips on completing the application forms can be found on the Home Office website at: www.crb.homeoffice.gov.uk/guidance

The CRB provide a free online tracking service which enables employers to track the progress of disclosure applications without needing to contact the CRB. By checking online, employers can see what stage of the process the application has reached, if an application has been returned because of errors, and if the CRB have dispatched the results of the check.

Further guidance and how to access the online system can be found at:

www.homeoffice.gov.uk/agencies-public-bodies/crb/services/online-tracking/

Use of information in a disclosure

When assessing applicants who declare convictions, cautions etc the criteria should allow for the fact that a conviction does not automatically stop a person gaining employment. However, someone who is barred must not be engaged in regulated activity as this is a criminal offence. Employers should consider the situation carefully before offering employment to individuals who are:

- on probation (in a legal sense)
- under a suspended prison sentence
- released from prison on parole
- still under a conditional discharge
- subject to Terrorism Prevention and Investigation Measures.

A criminal record disclosure will reveal if the individual has a criminal record, including details of convictions, cautions, reprimands or warnings. The certificate will only provide the basic facts such as the name and date of offence(s) and, if applicable, details of any sentence(s). It will not put them into context.

Prior to the changes to the disclosure and barring services enforced on 10 September 2012, under the Police Act 1997, the enhanced criminal record checks could also include additional non-criminal record information from the local police, where that information was relevant to the prevention or detection of crime. This additional information used to be addressed separately to the employer only, sometimes referred to as 'brown envelope' information. This provision no longer exists in the Police Act; however, the police may choose to use their common law powers to provide information directly to employers in cases where this is necessary in the interests of preventing or detecting crime.

When considering disclosure information employers must assess:

- any legal or regulatory requirements
- the nature of the offence
- its relevance to the position being applied for
- the length and type of sentence issued
- at what age the individual committed the offence
- whether the applicant has a pattern of offending behaviour, for example, if there are multiple offences

- whether the applicant's circumstances have changed since the offending behaviour. For example, where the offence was time-limited or committed as a juvenile, and the individual has taken on responsibilities in life to enhance their standing in society, such as through education or voluntary work
- the circumstances surrounding the offending behaviour and the explanation offered by the individual.

However, where the disclosure indicates that the ISA has made a barring decision against one or both of the barred lists, it is illegal for an employer to allow them to engage in regulated activity from which they are barred.

Employers should have a robust policy in place when recruiting people with a criminal conviction in line with the Equality Act. This may simply be an appendix to the recruitment policy, or application form that provides assurances to the applicant that fair consideration will be given against their skills and ability to do the job being offered.

Level of checking and eligibility

There are three levels of criminal record checks available: basic, standard and enhanced.

Where the position is eligible for a check, and a check is undertaken, employers must make it clear to the applicant that any offer of employment will be subject to a satisfactory criminal record check and, if required, a check against the barred list being undertaken. These checks should only be carried out once a conditional offer of employment has been made.

The applicant must also be informed that any offer of employment may be withdrawn if they knowingly withhold information, or provide false or misleading information. Existing staff may also be subject to disciplinary action and possible dismissal if they knowingly fail to disclose relevant information in relation to their criminal record or barred list status.

It is important to point out that possession of a criminal conviction does not automatically make an applicant unsuitable for employment in the NHS.

Basic level check

A basic disclosure is the lowest level of disclosure and only contains details of 'unspent' (current) convictions. Basic disclosures may be used for verifying information from applicants for posts that do not fall under the terms of the Rehabilitation of Offenders Act (Exceptions) Order, but where the individual is being considered for a 'position of trust'. This may include chief executives, senior management, board-level directors, or finance managers where the individual is in charge of public funds or internal budgets. This level of check is permissible where justifiable, whether or not to undertake this level of check is at the discretion of the employer.

Basic level disclosures can only currently be obtained through Disclosure Scotland.

Disclosure Scotland is part of the Scottish Criminal Record Office and provides access to criminal conviction data in Scotland. These checks are usually applied for by the individual; however employers may register as a responsible body. Although not a mandated requirement in the NHS, Disclosure Scotland will process applications for basic disclosures for employers in England and Wales.

Details on how to obtain basic disclosures are available at www.disclosurescotland.co.uk

Standard level check

Standard checks contain details of both spent (old) and unspent (current) convictions, including cautions, reprimands and final warnings held in England and Wales on the Police National Computer (PNC). Most of the relevant convictions in Scotland and Northern Ireland may also be included.

Eligibility for standard checks

Employers may carry out standard level criminal record checks to assess a person's suitability for work listed in the Exceptions Order i.e. where the type of work enables the person to have 'access to persons in receipt of such services in the course of [their] normal duties'. The term 'access' only relates to where individuals have direct, physical contact with patients as part of their day to day activities; it does not include positions where there is no contact with patients.

Please note that positions that purely involve having access to records are not covered under the terms of the Exceptions Order and therefore employers cannot obtain a standard or enhanced criminal record check for these positions.

The changes to the barring arrangements on the 10 September 2012 do no effect eligibility for standard checks. However, it is strongly recommended that employers refer to the Exceptions Order to make an informed decision against positions which may be eligible for a standard level check (*paragraph 13, Part 2 of Schedule 1 of the Order specifically refers*).

Enhanced level check

An enhanced check contains the same information as a standard check but also includes any non-conviction information held by local police, where they consider it to be relevant to the post. This information is referred to as 'approved information' on the enhanced check certificate.

From 10 September, there will be two levels of enhanced check – an enhanced disclosure *with* barred list information (for those that fall under the new definition of regulated activity) and an enhanced disclosure without barring information (for those previously falling within regulated activity but not meeting the terms required under the new definition) – see further detail about eligibility in the sections below.

Eligibility for enhanced with a barred list check

Individuals seeking work in a regulated activity position must be checked against the ISA's barred lists (this is known as a barred list check). This check is accessed through the process of applying for an Enhanced Disclosure. To determine if a role falls within regulated activity, see the definitions on page 13.

Individuals in regulated activity are eligible for an enhanced disclosure with barred list information. It will be possible to check against the children's and/or adults' barred list(s), depending on the role under consideration.

Eligibility for enhanced without a barred list check

The number of individuals in regulated activity is being reduced by the changes to the disclosure and barring services and, as a result there will be some positions which will no longer be eligible for an enhanced disclosure *with* a barred list check from 10 September 2012.

Employers may continue to obtain an enhanced level check *without* a barred list check for those positions that were previously eligible under the SVGA before 10 September 2012 but no longer fall within the new definition of regulated activity. Employers should make a risk based judgement against the roles and responsibilities of the position when considering whether an enhanced level check would be applicable.

Further information can also be obtained from a leaflet produced by the Home Office at www.homeoffice.gov.uk/publications/crime/disclosure-and-barring/ and a factual note issued by the Department of Health at www.dh.gov.uk/health/2012/08/new-disclosure-and-barring-services-definition-of-regulated-activity/

Regulated activity

The new definition of regulated activity relating to adults and children in the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, can be summarised as follows:

Adults

Any activity involving working or volunteering with **adults** that is of a **specific nature**.

An adult refers to any individual who is aged 18 years or over.

There are six categories within the new definition of regulated activity, these are:

(i) Providing health care

Any health care professional providing health care to an adult, or anyone who provides health care to an adult under the direction or supervision of a health care professional.

(ii) Providing personal care

Anyone who:

- provides physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of an adult's age, illness or disability;
- prompts and then supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without that prompting or supervision; or
- trains, instructs or offers advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability.

Personal care, excludes any physical assistance provided to an adult in the relation to the care of their hair. For instance a hairdresser based on a hospital site, or who comes onto a ward to cut patients hair would not be in regulated activity.

(iii) Providing social work

The activities of regulated social workers in relation to adults who are clients or potential clients are a regulated activity. These activities include assessing or reviewing the need for health or social care services, and providing ongoing support to clients.

(iv) Assistance with cash, bills and/or shopping

The provision of assistance to an adult because of their age, illness or disability, if that includes managing the person's cash, paying their bills or shopping on their behalf.

(v) Assistance in the conduct of a person's own affairs

Anyone who provides various forms of assistance in the conduct of an adult's own affairs, for example by virtue of an enduring power of attorney.

(vi) Conveying

Drivers and their assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving: health care, personal care or social care, for the purpose of enabling them to receive these services, as outlined above.

This does not include family and friends or licensed taxi drivers or licensed private hire drivers; and does not include trips taken for purposes other than to receive health care, personal care or social work, for example, trips for pleasure.

Examples of those providing conveying services include: emergency care assistants (ECA's), ambulance technicians and Patient Transport Service drivers (PTS's). Conveying may also include hospital porters where they are transporting adults - this would not include porters who provide non-patient transport – for example those who purely have responsibility for transporting laundry or samples to a laboratory, for instance.

There is no requirement for a person working or volunteering with adults to do the activities outlined above a certain number of times within a certain period before they are regarded as engaging in regulated activity.

For a more detail description and examples please follow the link: www.dh.gov.uk/health/2012/08/new-disclosure-and-barring-services-definition-of-regulated-activity/

Children

An activity involving working or volunteering with **children** that is of a **specified nature**:

- (i) Unsupervised activities: teaching, training, instruction, caring for or supervising of children, or providing advice/guidance on well-being, or driving a vehicle only for children.
- (ii) Work for a limited range of establishments ('specified places') with the opportunity for contact with children, for example schools, children's homes, childcare premises. Not work by supervised volunteers.

*It is important to note that children's hospitals are no longer categorised as a 'specified place'. The previous requirement for employers to consider all individuals in these settings who have the opportunity for contact with children against eligibility for an enhanced criminal record check with a barred list check **no longer applies**. This means that not everyone who has the opportunity to have contact with children in children's hospitals will now be regarded as carrying out regulated activity. Employers will need to make an assessment against the roles, activities and responsibilities of the particular post to determine if the role falls within the new definition of regulated activity.*

Work under (i) or (ii) is regulated activity only if done frequently.

- (iii) Providing personal care, for example washing or dressing; or health care by or supervised by a professional.

Health care or personal care activities do not need to be done frequently to be regulated activity. If they are part of a person's role, then that person is engaging in regulated activity and requires an enhanced criminal record check with a barred list check.

(iv) Registered child minding; and foster-caring.

Individuals who will be working in Regulated Activity as defined above will be eligible for an enhanced criminal record check with barred list check.

For more information about the scope of regulated activity for children please refer to www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/a00209802/disclosure-barring

Individuals working in an activity which has been removed from the new definition of Regulated Activity will still be eligible for an enhanced criminal record check, but without barred list check.

Starting work prior to receipt of a criminal record check

Employers may issue a provisional offer of employment before receiving the result of a criminal record check; however, it is important to emphasise that an employer will be committing an offence under the SVGA if they knowingly permit a person to engage in regulated activity from which the person is barred. The individual will also be committing a criminal offence where they engage in a regulated activity for which they are barred. It is therefore strongly recommended that individuals are not permitted to undertake any form of regulated activity, until the outcome of any barred list check is known.

Employers may, in exceptional circumstances, make a risk-based decision to appoint applicants while they are awaiting the outcomes of a criminal record check – for example, in order for them to do their induction training, or to undertake other duties which would not include them engaging in any form of regulated activity. In any such cases, the employer should ensure:

- an appropriate criminal record check has been applied for
- safeguards are put in place to manage that individual i.e. supervision, restricted duties and access to patients, until the disclosure has been obtained.

Existing staff changing jobs within the same organisation

A new criminal record check is not required where an existing member of staff moves jobs within the same organisation and their roles and responsibilities have not changed. The trigger for a new check is where:

- they have never had a criminal record check before and are moving to a position that now requires them to have a check. The level of check is dependent on the roles and responsibilities of the job
- their role has changed and they require a higher level of check, or a check against one or both barred lists
- there is a concern about that individual's suitability for the post.

Portability

Portability refers to the re-use of a criminal record check obtained for a position in one organisation and later used for another position in another organisation.

Currently there are no mechanisms in place that allow for criminal records to be updated. A criminal record disclosure has no term of validity and only provides information known at the point of issue. Employers can choose to accept a previously issued certificate, but they do so at their own risk. It is important for employers to have robust recruitment processes in place to enable them to make an informed judgement about whether to accept an existing certificate rather than requiring a new check. Some of the key factors they would need to consider would include the age of the existing disclosure, the risks of abuse associated with the position in question, any previous knowledge of the individual involved (if already appointed within the organisation), and any other information gained throughout the recruitment process.

There are however, a number of specified easements that have been put in place for certain highly mobile staff. This is because the frequency that they are required to move from position to position far outweighs the risk, so the trigger for criminal record checks to be carried out each time they change positions has been relaxed. These easements are outlined below.

Employers must only accept original copies of the criminal record certificate. Photocopies should not be accepted (see section on checking authenticity of criminal record certificates).

Employers should refer to the CRB's risk assessment framework, which can be found on their website at: www.crb.homeoffice.gov.uk

Retrospective checks

There is no legal requirement to carry out retrospective (or periodic) criminal record checks on staff. Changes to the disclosure and barring services under the Protection of Freedoms Act (2012) do not change this. How often employers carry out periodic checks on existing staff who are not changing jobs remains a locally determined decision which could be based on a case by case risk assessment or an organisational-wide approach.

Easements:

Doctors in training

Doctors on educationally-approved rotational training are regarded as being in continuous employment during the term of training and are therefore required to have a criminal record check, as a minimum, once every three years, rather than each time they change rotation.

Employers must seek written assurances from the host/previous employer that appropriate clearances have been obtained within the last three years. Trusts may undertake criminal record checks more frequently, but any additional checks must be proportionate to risk. For example, where assurances cannot be obtained or where there is a specific concern about the individual's practice or criminal behaviour.

Where it is highly likely that the individual will be working in regulated activity with both children and adults at an early stage in their training programme, it is strongly recommended that checks are made against both barred lists.

Temporary workers supplied by an agency

Temporary staff supplied by an agency are recommended to have criminal record checks at least once a year. This is inclusive of locum staff and those working as part of a trust bank.

The employing organisation is required to assure itself that appropriate criminal record checks have been obtained within the last 12 months by seeking written assurances from the agency. Employers may require more frequent checks i.e. where any such assurances have not been provided by the agency, or a new post changes the level of check required, or where there is a concern about an individual's practice or criminal behaviour.

The recommendation for annual checks does not apply to individuals who are working for a trust bank or are registered with NHS Professionals, in addition to holding a substantive NHS contract. The contracting organisation should seek written assurances that the substantive employer has carried out appropriate checks at the correct level when they were first appointed. If, however, the individual leaves their substantive post, or where there is a break in service of three months or more prior to them applying to a trust bank or NHS Professionals, then a new criminal record check should be requested.

Highly mobile staff

Staff who are highly mobile, such as clinical staff who hold a substantive post within one trust but are required to work across a number of NHS organisations or to provide emergency cover in another NHS organisation, are regarded as being in continuous employment and do not need a new criminal record check. The employing organisation must seek written assurances from the individual's host/substantive employer that appropriate checks have been carried out at the correct level. Where such assurances cannot be obtained, then the employing organisation may wish to request a new check.

Further guidance for employers

GPs and general practice staff

All GPs applying to join a medical performers list under the Performers List Regulations have to provide an enhanced disclosure as part of their application. They are also required to make a declaration about any past convictions or disciplinary action when applying to join the List.

In addition, general practices also have a responsibility to ensure that they carry out appropriate criminal record checks on applicants for any position within their practice that qualifies for either an enhanced or standard level check. This should include health visitors, nursing staff etc. This may also include front office reception staff.

Any requirement for a check and eligibility for the level of check (standard or enhanced) is dependent on the roles and responsibilities of the job.

Dentists and their practice staff

Dentists applying to join a Performers List are required to provide an enhanced disclosure as part of their application. An exception to this has been provided under Regulation 29(2) of the NHS (Performers Lists) Regulations 2004 (as amended), which allows vocational dental practitioners to be included in the performers list immediately. A satisfactory criminal record certificate must be submitted within two months.

In addition, dental practices have a responsibility to ensure that they carry out appropriate criminal record checks on applicants for any position within their practice that qualifies for either an enhanced or standard level check. This should include dental nurses, dental technicians etc. This may also include front office reception staff. The requirement for a check and the level of check is dependent on the roles and responsibilities of the job.

Students/trainees

Criminal record checks will apply to students who, as part of their professional qualification, are required to carry out a clinical placement where they will undertake work that falls within the Exceptions Order, Police Act regulations and/or regulated activity.

Criminal record checks may be requested by a higher educational institution (HEI) as part of its admissions procedure, where a clinical training placement has been arranged and the applicant has been provisionally accepted. Many students/trainees will be required to move frequently to new placements during their training, so it is recommended that they have a criminal record check at the start of their training course, rather than each time they move to a new placement. The employing organisation should seek written assurance that the HEI has carried out an appropriate check at the correct level. Where this assurance cannot be obtained, the employer may request a new check.

Where there is a delay in obtaining a criminal records check, students may take up their placement providing appropriate safeguards are put in place.

Work experience/placements

A minimum age limit for criminal record checks has been set in the Protection of Freedoms Act 2012. This means that employers must not apply for a criminal record check for individuals aged under 16.

Students aged 16-18 who are on work experience placements engaging in activity with vulnerable groups will also not be required to have a criminal record check on the basis that the roles they are undertaking will involve them observing or carrying out minor duties under full supervision.

Volunteers

The eligibility criterion for a criminal record check or barred list check is the same regardless of whether the individual is a paid employee or unpaid volunteer.

If a volunteer requires a criminal record check because of their role and responsibilities whilst volunteering, you should consider whether the position satisfies certain criteria to qualify for a free of charge Disclosure. The definition of a 'volunteer' is outlined within the Police Act 1997 (Criminal Records) Regulations 2002 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 criminal record and barring purposes it is deemed that 'unpaid' means not in receipt of any payment (for example, remuneration, allowance, financial benefit, payment in kind, or other means of support) in relation to the activity. The applicant must not therefore:

- receive payment for activities (except for travel and other approved out-of-pocket expenses)
- be on a placement/work experience;
- 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.

Checking authenticity of criminal record certificates

Criminal record disclosure certificates contain a number of security features that can be used to verify whether a disclosure has been counterfeited or altered in any way.

The security features are:

- a 'crown seal' watermark repeated down the right-hand-side of the disclosure, which is visible both on the surface and when holding the disclosure up to light
- a heat sensitive diamond-shaped security panel to the left of the disclosure title, which will change colour when warmed, for example when held between the thumb and forefinger
- a background design incorporating the word 'disclosure', which appears in a wave-like pattern across both sides of the document. The colour of this pattern is uniform across the front of the disclosure but alternates between pink and green on the reverse
- fluorescent inks and fibres that are visible under UV light
- ink and paper that will change colour in the presence of water or solvent-based liquid.

If you have any doubts as to whether a disclosure is genuine, or if you think that it may have been altered, please contact the CRB.

Staff recruited from overseas

It is strongly recommended that employers should request a certificate of good conduct or overseas criminal record check when recruiting staff from abroad. Currently, the CRB cannot access criminal records held overseas. However, in a small number of cases, overseas criminal records are also held on the Police National Computer (PNC) and these would be revealed as part of a criminal record check. Where the position meets the criteria for a criminal records check, even if the applicant claims they have never lived in the UK before, a check should still be obtained in addition to the individual's overseas criminal records. Guidance on filling in a criminal record check application form for individuals who do not have a five year history of address in the UK can be found on the Home Office website at: www.crb.homeoffice.gov.uk/guidance/overseas_applicants

All overseas police checks must be in accordance with that country's justice system and UK requirements. The Home Office website at www.crb.homeoffice.gov.uk/guidance/ provides guidance on how to access information from a list of countries.

Employers requesting a criminal record check from overseas should be aware that the criminal record may be returned in a different language and you may need to make provision to have it translated.

The accuracy and authenticity of the information typically depends on how the certificates are obtained. Some foreign embassies and high commissions in the UK initiate requests on behalf of applicants and liaise with the relevant issuing authority abroad. In cases where prospective employees have to apply to the issuing authority directly, the relevant UK-based embassy or high commission may still be able to provide advice on what to expect. If there is any doubt about the documentation produced, they may also be able to authenticate the search results.

If the country that you are looking for is not listed on the CRB website, you may wish to contact the country's representative in the UK. Contact details for those countries that have a representative in the UK can be found on the Foreign and Commonwealth website at www.fco.gov.uk or by telephoning 020 7008 1500.

Further information

This document only outlines the eligibility and requirements for criminal record checks. To ensure they are fully compliant with legal requirements under the Safeguarding Vulnerable Groups Act, as amended by the Protection of Freedoms Act (2012), employers must refer to Home Office guidance and supporting frequently asked questions, which are available on the NHS Employers website at www.nhsemployers.org/employmentchecks

If employers are unsure of their legal responsibilities, we would strongly recommend that they should seek their own legal advice.

More detailed guidance covering referrals and the ISA's decision-making process can be found on the Independent Safeguarding Authority's website at: www.isa-gov.org.uk

Every effort is made to ensure that the requirements within these standards are updated in line with new legislation and DH policy as it comes into force. Where employers choose to download hardcopies of the standards, it is essential that they regularly refer to the NHS Employers website to ensure that they have the latest information to meet legal and mandated requirements. Alerts to any changes to the standards are published in the NHS Workforce bulletin. Visit www.nhsemployers.org/employmentchecks

Email employmentchecks@nhsemployers.org

This document uses information from the Criminal Records Bureau

www.crb.homeoffice.gov.uk/ and Independent Safeguarding Authority www.isa-gov.org.uk

NHS Employers

The NHS Employers organisation is the voice of employers in the NHS, supporting them to put patients first. Our vision is to be the authoritative voice of workforce leaders, experts in HR, negotiating fairly to get the best deal for patients.

We work with employers in the NHS to reflect their views and act on their behalf in four priority areas:

1. pay and negotiations
2. recruitment and planning the workforce
3. healthy and productive workplaces
4. employment policy and practice.

The NHS Employers organisation is part of the NHS Confederation.

Contact us

For more information on how to become involved in our work, email getinvolved@nhsemployers.org

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