

Criminal record checks

March 2008

About the NHS Employment Check Standards

This document outlines the criminal record checks NHS organisations must carry out for the appointment and ongoing employment of all eligible individuals in the NHS. It is one of a set of six that make up the *NHS Employment Check Standards*.

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

These standards replace previous NHS Employers guidance on safer recruitment and outline the employment checks NHS organisations must carry out. The Healthcare Commission will be assessing trusts against these standards as part of their annual health check in 2008/09.

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

These standards are mandatory for all applicants for NHS positions (prospective employees) and staff in ongoing NHS employment. This includes permanent staff, staff on fixed-term contracts, temporary staff, volunteers, students, trainees, contractors and highly mobile staff supplied by an agency. Trusts appointing locums and agency staff will need to ensure that their providers comply with these standards.

Avoiding discrimination

Employers must avoid unlawfully discriminating in their recruitment processes on the grounds of race, disability, age, gender, religion 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 should 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 Electronic Staff Record (ESR) where available. 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

Introduction

The Criminal Records Bureau (CRB) provides access to information across England and Wales about criminal convictions and other police records to help employers make an informed decision when recruiting staff. The information provided by the CRB is known as a 'disclosure'.

The CRB provides two levels of disclosure – standard and enhanced. Standard and enhanced checks are mandatory in the NHS for all staff who, as part of their appointment, will have regular contact with patients in the course of their normal duties. Where posts do not meet the criteria for a standard or enhanced check, a basic disclosure is recommended. A basic disclosure is the lowest level of disclosure and only contains details of all unspent (current) convictions.

Information obtained through disclosures can help employers to make an informed decision on whether or not to appoint a prospective employee.

The decision rests with the employer as to whether to employ a person whose CRB disclosure reveals a conviction or other information. A person's criminal record should be considered in the light of all the relevant circumstances and judged on a case-by-case basis.

Possession of a criminal conviction does not automatically make an applicant unsuitable for employment in the NHS but some offences (eg involving violence or sexual abuse) should preclude an applicant from having access to patients.

Checks should only be carried out on a prospective employee after a provisional decision to offer them the position has been made. Employers must make it clear to prospective employees that appointment to any position is conditional on satisfactory checks.

Prospective employees must also be informed that any offer of appointment may be withdrawn if they knowingly withhold information, or provide false or misleading information. Existing staff could also be subject to disciplinary action and dismissal if they have failed to disclose relevant information in relation to their criminal record status.

Criminal record checks are only a part of the pre-employment checking process. For information on verification of identity, right to work, registration and qualification, employment history and references and occupational health checks, please see the other documents in the *NHS Employment Check Standards*.

The CRB disclosure code of practice

All registered employers should observe the CRB Disclosure Code of Practice when using disclosure information. The code is designed to ensure that any information released will be used fairly, and handled and stored appropriately.

In particular, employers are required to:

- treat all applicants fairly and without discrimination
- have a written policy on the recruitment of ex-offenders that can be given to all applicants where disclosure information will be requested
- have a written policy on the correct handling and safe keeping of disclosure information

- ensure that criminal record information is only supplied for the purpose of a recruitment (or other relevant) decision.

The code of practice is available at www.crb.gov.uk

Handling and retention of disclosure information

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

In accordance with section 124 of the Police Act 1997, employers must ensure that disclosure 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. It is a criminal offence to pass on this information to anyone who is not entitled to receive it.

Disclosure information should only be used for the specific purpose for which it was requested and with the applicant's full consent.

Disclosure information should not be retained for any longer than is necessary. It should be kept for a further six months beyond the duration of employment and six months where the applicant has been unsuccessful, to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances, it is considered necessary to keep disclosure information for longer than six months, employers should consult with the CRB to ensure that this does not contravene with the data protection or human rights of the individual.

Once the retention period has elapsed, disclosure information should be destroyed by secure means (eg, shredding, pulping or burning). Safe storage and strictly-controlled access must still be adhered to while documents are awaiting destruction.

Use of disclosures

The CRB disclosure will reveal if an individual has a criminal record, including details of convictions, cautions, reprimands, warnings and bind-overs. It also provides the means to check if an individual is barred from working with children; or for positions in regulated social care, if they are barred from working with vulnerable adults.

A disclosure will usually 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.

When considering disclosure information employers should assess:

- the nature of the offence
- the age at which it was committed
- its relevance to the post in question
- whether the applicant has a pattern of offending behaviour

- whether the applicant's circumstances have changed since the offending behaviour
- the circumstances surrounding the offending behaviour and the explanation offered by the convicted individual.

The suitability for employment of a person with a criminal record will vary, depending on the nature of the position. An assessment of an applicant's skills, experience and conviction circumstances should be weighed up against the level of risk, or the opportunity to cause harm or damage, in that position.

An employer should not employ anyone who appears on any of the lists held by either the Department of Children, Schools and Families (formerly the DfES) or the Department of Health, showing that the individual is barred from working with children and/or vulnerable adults under the Protection of Vulnerable Adults Act (PoVA) or Protection of Children Act (PoCA).

Spent and unspent convictions

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 with no further convictions. After this period of rehabilitation the conviction is considered as 'spent'. In normal circumstances, once a conviction is spent, the convicted person does not have to reveal this to a future employer when applying for a job. However, in order to protect the vulnerable, the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 exempts some professions within the health and care sectors from this approach. Where posts have been identified as exempt under the Exceptions order, employers are entitled to know about all previous convictions regardless as to whether they are considered 'spent' or 'unspent'.

By law, employers cannot request a standard or enhanced disclosure on any position that is not identified as exempt from the Act. For all other positions, employers may only request details of any unspent (current) convictions. This is known as a basic disclosure and is currently not a mandatory criminal records check within the NHS.

Levels of disclosure and eligibility

Recruiting managers will need to identify the appropriate level of disclosure required for individual posts, balancing the need to prevent unsuitable people from working in sensitive posts with the need to ensure that this does not discriminate against ex-offenders who have been rehabilitated. The types of disclosure and which positions are eligible for them are outlined in Table 1 on page 6.

Standard and enhanced disclosures for prospective employees in England and Wales must be requested through the Criminal Records Bureau in Liverpool. Basic disclosures for England and Wales can be requested from Disclosure Scotland.

Table 1: Types of disclosure

Type of disclosure	What it contains	Eligibility
Standard	Lists all convictions (spent and unspent), cautions, reprimands, and warnings held on the Police National Computer (PNC). If the position involves working with children and the relevant box has been ticked on the application form to indicate this, it will also disclose whether the individual is on any lists held by the Department of Health (DH) or the Department for Children, Schools and Families (DCSF), and is unsuitable to work with children.	As defined by the Police Act and Rehabilitation of Offenders Act 1974. Standard disclosures are required for posts which involve the individual having access to patients in the course of their normal duties.
Enhanced	Enhanced disclosures contain the same information as standard disclosures but with the addition of local police force information considered relevant, ie non-conviction information and investigations.	As defined by the Police Act and Rehabilitation of Offenders Act 1974. Enhanced disclosures are for posts involving a far greater degree of contact with patients. In addition to the standard disclosure requirement, the type of work needing an enhanced disclosure will also involve regularly caring for, supervising, training or being in sole charge of children and/or vulnerable adults.
Basic	Includes details of unspent (current) convictions only.	Includes details of unspent (current) convictions only.

Eligibility for a standard disclosure

A standard disclosure applies to any post that is exempt under the Rehabilitation of Offenders Act and relates to sensitive areas of employment involving access to patients in the course of their normal duties. The definition used within legislation is:

“any employment or other work which is concerned with the provision of health services and which is of such a kind as to enable the holder of that employment or the person engaged in that work to have access to persons in receipt of such services in the course of their normal duties.”

Standard disclosures contain details of both spent and unspent (current) convictions, including cautions, reprimands and final warnings held on the Police National Computer (PCN).

Eligibility for an enhanced disclosure

Enhanced disclosures contain the same information as in the standard disclosure but also include any non-conviction information held by local police, where this is considered by them as relevant to the position in question.

In a small number of cases an enhanced disclosure may result in the local police disclosing non-conviction information to the employer by way of a separate letter. This may include information about a current investigation and is very important in determining whether an applicant is suitable for a particular post. This information will not appear on the applicant's copy of the disclosure and it is a criminal offence for an employer to share any such information with the applicant.

Enhanced is the highest level of disclosure, and to qualify – in addition to providing access to patients in the course of normal duties – the position must also meet one of the criteria set out in regulations made under Section 113B of the Police Act which states that the position must:

“regularly involve caring for, training, supervising or being in sole charge of:

- *a person aged under 18; or*
- *a person aged 18 or over who is a vulnerable adult – as defined by the Police Act 1997 (Enhanced Criminal Record Certificates; Protections of Vulnerable Adults) Regulations 2002.”*

Any vulnerable adult care position should be considered against the criteria set out within the Police Act for both ‘vulnerable adult’ and ‘care position’.

The full definitions of a vulnerable adult and care position, as set out in the Police Act 1997 (Enhanced Criminal Record Certificates; Protections of Vulnerable Adults) Regulations 2002 is:

“a person under the age of 18, or a person aged 18 or over who is receiving services of a type listed in paragraph (1) below and in consequence of a condition of a type listed in paragraph (2) below has a disability of a type listed in paragraph (3) below.

NB: a vulnerable adult must meet one of the criteria in each of the three paragraphs below

1. *An individual receiving one of the following services:*

- a. *accommodation and nursing or personal care in a care home*
 - b. *personal care or nursing or support to live independently in his own home*
 - c. *any services provided by an independent hospital, independent clinic, independent medical agency or NHS body*
 - d. *social care services; or*
 - e. *any services provided in an establishment catering for a person with learning difficulties.*
2. *As a result of one of the following conditions:*
- a. *a learning or physical disability*
 - b. *a physical or mental illness, chronic or otherwise, including an addiction to alcohol or drugs*
 - c. *a reduction in physical or mental capacity.*
3. *Who has one of the following disabilities:*
- a. *a dependency upon others in the performance of, or a requirement for assistance in the performance of, basic physical functions*
 - b. *severe impairment in the ability to communicate with others; or*
 - c. *impairment in a person's ability to protect himself from assault, abuse or neglect."*

A 'care position' is where:

- a. *accommodation and nursing or personal care in a care home is provided (where "care home" has the same meaning as in the Care Standards Act 2000);*
- b. *personal care or nursing or support is provided for a person to live independently in his own home;*
- c. *social care services; or*
- d. *any services are provided in an establishment catering for a person with learning difficulties.*

Please note that this definition of vulnerable adult exists only for the purpose of eligibility for an enhanced disclosure. It has no relevance to the protection of vulnerable adults scheme (PoVA) which has not been introduced in the NHS.

Posts not exempt from the Rehabilitation of Offenders Act

It is illegal to carry out a standard or enhanced disclosure on any post that is not exempt under the Rehabilitation of Offenders Act (Exceptions) Order, and to do so could render an employer liable for legal action.

Such posts are defined as where the individual does not have access to patients in the course of the normal duties. For example, this would include administration or management staff who work in a separate building or have minimal access to patients; maintenance staff who are not required

to work on ward areas; laundry staff; or catering staff who do not deliver food to patients.

Anyone working in a healthcare environment could potentially gain access to patients and it is strongly recommended that employers carry out a risk assessment to determine whether the post warrants a basic disclosure being requested.

Basic disclosures

A basic disclosure is the lowest level of disclosure and only contains details of 'unspent' (current) convictions. There is currently no mandatory requirement to use basic disclosures within the NHS but these may be used to verify the information disclosed by applicants for posts that are not exempt under the Rehabilitation of Offenders Act (Exceptions) Order but where the individual is appointed to a position of trust, eg, board-level directors; staff with access to patient records; or positions in finance where the individual has access to public funds and/or internal budgets.

Basic 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; their basic disclosure service has been extended to cover England and Wales. Details on how to obtain basic disclosures are available at www.disclosurescotland.co.uk

Model declaration forms

Where the position meets the criteria for a criminal record check, employers will need to request a self declaration from the applicant. Employers must use either model declaration form A, for positions eligible for a standard or enhanced disclosure, or model declaration form B, for positions requiring a basic disclosure. Download the forms at www.nhsemployers.org/employmentchecks

Disclosure applications

Once a provisional offer of appointment has been made, employers will need to request a CRB disclosure. Employers are responsible for ensuring that all disclosure application forms are completed correctly to help to avoid any unnecessary delays in processing.

The CRB has a service that enables employers to track the progress of their disclosure application online. It can be accessed, free of charge, at www.crb.gov.uk/tracking

Protection of Children Act (PoCA)

Under the Protection of Children Act (PoCA), the Department for Children, Schools and Families (DCSF) (formerly the DfES) is required to maintain a list of people barred from working with children.

When a position meets the criteria specified in the Act, the employer is legally required to carry out a PoCA check. This must be requested as part of a standard or enhanced disclosure by ticking the relevant box on the application form which indicates that 'the position involves working with children'.

The post must meet one of the criteria in the Act for a regulated position, defined as: 'a position whose normal duties include caring for, training, supervising or being in sole charge of children'. (Section 36 1 c Criminal Justice and Court Services Act, amending PoCA).

Posts that satisfy the definition will normally be specialist childcare positions.

The Criminal Justice and Court Services Act 2000 makes it a criminal offence for:

- anyone to seek or accept work in a regulated position knowing that they are on the PoCA list or List 99
- an employer to offer work to, or employ a person in a regulated position knowing that person is included on the PoCA list or List 99.

PoCA checks are most likely to be requested as part of an enhanced disclosure, however, in some cases they may also apply to posts requiring a standard disclosure. This could be where the post is a regulated position because it involves the management or supervision of a post meeting the definition identified above.

Employers should cease to employ any individual working in a childcare position if they subsequently discover that they are included on these lists.

As a legal requirement, a PoCA check must be carried out every time a person moves to a new post requiring a check – this is regardless of how recently the last check was carried out. PoCA checks are not optional and are not portable. The only exception is where a person has been supplied by an employment agency or business where an easement in the Act allows a check to be carried out annually. The check may be carried out by the agency but the employer must obtain written confirmation of the facts as ascertained by the agency.

A person can not be appointed to a regulated childcare position until the PoCA check has been received.

Protection of Vulnerable Adults (PoVA)

The Care Standards Act 2000 provides for a scheme for the protection of Vulnerable Adults (PoVA). PoVA checks, like PoCA checks, can be obtained as part of a CRB disclosure. However, PoVA checks only apply to regulated posts within the social care sector and it is illegal to request a PoVA check for positions within the NHS. Employers should not tick Section Y on the disclosure form, which indicates that the post involves working with vulnerable adults.

NHS employees may be subject to a PoVA check if they are contracted or otherwise employed within a regulated social care environment but it is the responsibility of the care provider to carry out the PoVA check and not the NHS employer. Examples of a regulated social care environment are a registered care home or domiciliary care agency providing services to vulnerable adults using those services. PoVA checks may apply to a student if their placement involves working within a registered care home for the elderly.

In the absence of a PoVA check, care should be taken when recruiting staff to sensitive positions that involve the care of vulnerable adults and each position should be considered against the criteria for an enhanced disclosure.

Where an applicant for a post within the NHS comes from recent social care employment (since 2004), it is essential that employers seek references from the relevant social care employer to provide an assurance of their good standing and suitability for working with vulnerable adults in the NHS. Employers should be vigilant in looking for gaps in recent employment history.

Starting work before the return of a disclosure

It is illegal to appoint a prospective employee to a regulated childcare post where a Protection of Children Act (PoCA) check is required until the outcome of the PoCA check has been received.

For any other post, it is highly desirable that applicants do not start work until disclosure information has been received. Where there is an urgent need to employ someone quickly to a position that does not require a PoCA check, it should be made clear to the applicant that the offer of employment is provisional and conditional on the satisfactory outcome of CRB and pre-employment checks. The conditions of a provisional appointment must be made clear to the employee, in writing. It may be appropriate for the person to work initially without access to patients, or under supervision.

Portability

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

The CRB has withdrawn its portability service and employers accepting previously issued disclosure information do so at their own risk. Employers using previously disclosed information should follow the CRB framework when carrying out the appropriate risk assessment against the post being applied for. See www.crb.gov.uk

Doctors in training

Where a doctor is appointed on an educationally-approved training rotation, a risk assessment may indicate that the CRB checking requirement can be set aside. This would only be where there is evidence of a successful disclosure to an NHS employing organisation within the previous three years and where the new post does not change the status of the check. This means that the three-yearly checking cycle is not affected by the CRB's withdrawal of their portability service for those who are under close educational supervision and who maintain an ongoing relationship with the NHS. Employers may choose to run checks more frequently, but are not required to do so.

The exception to this principle is where a doctor is appointed to a training post that changes the status of the check, for example a post in paediatrics or other position within the scope of the Protection of Children Act (PoCA). PoCA checks are a legal requirement and therefore a new check must be carried out irrespective of the date of the previous check.

Highly mobile staff

Agency workers, locums and other temporary, highly mobile staff should be checked, as a minimum, at least once a year. If they cannot produce evidence that a check has been carried out, then a new check must be requested by the employing organisation. This requirement does not apply to bank staff who, in addition to their temporary work, also hold substantive NHS contracts.

Where CRB checks are carried out by an agency, employers must ensure that they can satisfy themselves that the relevant level of check has been carried out and written confirmation has been received to confirm this.

Students/trainees

CRB checks may apply to students. The following points apply.

- CRB disclosures may be requested by Higher Educational Institutions (HEIs) as part of their admissions procedure for healthcare students where a training placement has been arranged. A disclosure should only be requested for applicants who have been provisionally accepted.
- The level of disclosure (standard or enhanced) should be agreed with the host trust. Because students will normally be supervised, in most cases, a standard disclosure will be all that is required. In the case of a placement which also involves 'regularly caring for, training, supervising or being in the sole charge of children or vulnerable adults in the course of their normal duties' (Police Act) an enhanced disclosure will be required. The host trust should advise if any post meets this criterion.
- Many students and trainees move frequently to new placements during their training and it is recommended that they have a CRB check at the start of their training course rather than each time they move to a new placement. If a satisfactory check has been carried out by the university, there is no legal requirement for this to be repeated by the trust when the student/trainee takes up their placement. A new CRB check is required when they first start working in the NHS.
- Where there is a delay in processing a disclosure, students can start their placement if they are supervised and patients are not being exposed to unacceptable risks. The exception to this is when a PoCA check is required, in which case a full CRB check with PoCA clearance must be received before they take up their placement.
- Some students or trainees may require a Protection of Vulnerable Adults (PoVA) check (see the section on PoVA checks).

Volunteers, GPs and dentists

Volunteers

Not all volunteers will need a CRB check but where they have significant and regular contact with vulnerable people in the course of their normal duties, employers should undertake the same criminal record checks as they would when employing paid staff. Employers must ensure that volunteers are fully aware of organisational policies and procedures governing the protection of vulnerable people and what they should do and to whom they can refer if they have any concerns.

The CRB will issue a disclosure free of charge for volunteers if the applicant satisfies the following criterion:

"a person who is engaged in any activity which involves spending time, unpaid (except for travelling and other approved out-of-pocket expenses), doing something which aims to benefit someone (individuals or groups) other than/or in addition to close relatives".

GPs and general practice staff

All GPs applying to join a PCT's medical performers list under the Performers List Regulations have to provide an enhanced disclosure as part of their application. General Practices have a

responsibility to check an applicant for any position that qualifies for a CRB check within their practice.

Dentists and their practice staff

Dentists applying to join a PCT 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 List) Amendment Regulation, which allows vocational dental practitioners to be admitted to the performers list immediately on condition that a satisfactory CRB certificate is received within two months. Dentists have a responsibility to check an applicant for any position which qualifies for a CRB check within their practice.

Staff recruited from overseas

NHS employers will also need to carry out criminal record checks when recruiting staff from abroad. Currently, the CRB can only access criminal records held on the Police National Computer (PNC) in England, Wales and Scotland (there is also some conviction data held on the PNC from Northern Ireland). Where the position meets the criteria for a disclosure – even if the applicant claims they have never lived in the UK before – a CRB disclosure should still be obtained in addition to the individual's overseas criminal records.

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

Under PoCA, there is a legal requirement for staff, whether recruited from inside or outside the UK, to be checked against the PoCA list before they are appointed to a childcare position.

Employers requesting a criminal records check from overseas should be aware that the criminal record may be returned in a different language and you will 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 record produced, they may also be able to authenticate the search results.

Further guidance can be found on the Security Industry Authority website at www.the-sia.org.uk

If the country that you are looking for is not listed on the CRB or SIA 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

Visit www.nhsemployers.org/employmentchecks

Email employmentchecks@nhsemployers.org

This document uses information from the Criminal Records Bureau. Visit the CRB website at www.crb.gov.uk

NHS Employers

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NHS Employers represents trusts in England on workforce issues and helps employers to ensure the NHS is a place where people want to work. The NHS workforce is at the heart of quality patient care and we believe that employers must drive the workforce agenda. We work with employers to reflect their views and act on their behalf in four priority areas:

- pay and negotiations
- healthy and productive workplaces
- recruitment and planning the workforce
- employment policy and practice.

NHS Employers is part of the NHS Confederation.

Contact us

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