CRIMINAL RECORD CHECKS

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INTRODUCTION

What is a criminal record check?
A criminal record check relates to the data held about a person’s criminal history. The information included in a criminal record can vary between countries, and even between jurisdictions within the same country.

In the majority of cases, a check will include all criminal offences including cautions, convictions, reprimands and final warnings. It may also include traffic offences such as speeding and drink-driving. In some countries the record is limited to actual convictions issued by a court of law, while others will include arrests, charges, charges missed, charges pending and even charges of which the individual has been acquitted.

Importance of a criminal record check
Criminal record checks help employers ensure that unsuitable people are prevented from working with those who are considered vulnerable because of certain circumstances (for example, they are in receipt of health or social care).

Employers must carefully consider any criminal history data alongside other information they have gathered about the candidate as part of the wider recruitment process – see further guidance about key considerations on pages sixteen - eighteen. Only where employers take this type of holistic approach can they ensure fair, safe and effective recruitment practice.

Where can I obtain a criminal record check?
In the UK, criminal record checks should be obtained through:

— the Disclosure and Barring Service (England and Wales)
— Disclosure Scotland (Scotland)
— Access NI (Northern Ireland)

Employers should always request checks using the appropriate service for their geographical area. All three agencies have access to the same type of data and have reciprocal arrangements in place to share relevant criminal record information across the borders, where appropriate.

This standard outlines the criminal record check requirements which apply to NHS organisations within England only.

The role of the Disclosure and Barring Service (DBS)
The primary role of the Disclosure and Barring Service (DBS) is to help employers make safe recruitment decisions by checking information that may be held about an applicant on the Police National Computer (PNC). It also has a team of caseworkers who process referrals about individuals who have harmed/or pose a risk of harm to vulnerable groups with a view to placing them on the adults and/or children’s barred lists.
Types of DBS check

We refer to a number of different types of DBS check in this document. Each type of check provides a different level of information, this is explained in more detail in the sections below.

Standard check

Employers can require a standard check for any work or activity which is listed under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as being concerned with providing a health service and where the individual carrying out that role has access\(^1\) to patients in the course of their normal duties.

A standard check includes all spent (old) and unspent (current) convictions, cautions, reprimands and final warnings that are held on the Police National Computer (PNC) and are not protected by the DBS filtering rules. It may also include any relevant convictions in Scotland and Northern Ireland. Further information about the filtering rules can be found in appendix three.

Enhanced check without barred list information

To be eligible to request an enhanced check, the position must be included in the Exceptions Order as being exempt from the Rehabilitation of Offenders Act. In addition, the activities being carried out by the individual in that position must also be listed under \textit{work with adults} and/or \textit{work with children} as outlined by the Police Act 1997 [Criminal Records] [Amendment] Regulations 2013. See details about the eligibility criteria for this level of check in appendix two.

The enhanced check will provide the same information as a standard check. It will also include any other relevant information that is held by the police which a chief officer reasonably believes should be disclosed and considered by the employer.

Enhanced check with barred list information

Barred list information is not routinely provided in an enhanced check. To be eligible to request information held against the adults and/or children’s barred lists, the position or activities must be listed under the definition of \textit{regulated activity} in the Safeguarding Vulnerable Groups Act 2006 (as amended by Protection of Freedoms Act in 2012).

Employers should refer to the government’s factual notes which describe the eligibility criteria for this level of check in greater detail.

\begin{itemize}
  \item Regulated activity with adults
  \item Regulated activity with children
\end{itemize}

\(^{1}\) For the purpose of DBS checks, we would advise that ‘access’ does not include positions which only allow individuals to have limited contact with patients (for example, no more opportunity than a visitor to the hospital site). This is intended to exclude staff who merely need to pass through patient areas to get to their normal place of work.
An individual is committing a criminal offence if they try to engage, or are engaged in any form of regulated activity with the group(s) they are barred from working or volunteering with. It is also unlawful for employers to knowingly allow an individual to engage in a regulated activity with the group(s) from which they are barred from working or volunteering with.

This level of check will include the same information as the enhanced disclosure. It will also outline whether the person is barred from carrying out certain activities with children or adults, or both as may be relevant to the position being appointed to.

**DBS Adult First service – regulated activity**

The **Adult First service** enables employers to carry out a quick check against the adults barred list where any delays to recruitment is likely to have a significant impact on the provision of services and/or patient safety, for example, during times of increased pressure on NHS services, such as in winter. It does not however, remove the need to obtain a full enhanced disclosure.

If the check confirms that the individual is not barred from working with adults, and all other checks have been completed satisfactorily, the employer can allow them to start work under supervision\(^2\) while waiting for their full enhanced disclosure to come through.

It should be made clear to the individual that any unconditional offer of employment will not be issued until the full enhanced disclosure has been received, regardless of any quick check of the adults barred list. This is because the full disclosure certificate may include additional information that may need to be considered.

The Care Quality Commission will require employers to demonstrate sound reasons for allowing individuals to start work before the full disclosure certificate has been received. They will also require them to outline what safeguarding measures were put in place to manage that individual during this time.

There is no equivalent service to carry out a quick check against the children’s barred list. If individuals are working in a regulated activity with children, the employer must wait until their full enhanced disclosure has been received before they allow them to carry start work.

**DBS update service**

This service enables the portability of previously issued disclosure certificates where individuals are changing jobs or volunteering activities and are continuing to work with the same workforce (for example, children, adults or both children and adults).

The online status check will instantly confirm that employers can either rely on the information provided in the individual’s original disclosure certificate, or

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\(^2\) The precise nature and level of supervision will vary from case to case. Organisations must ensure that the supervision in place is sufficient, in their judgement, to provide reasonable assurance for the protection of adults and/or children in receipt of health care or services.
advise that a new DBS check will need to be obtained. This not only provides strengthened safeguarding measures because it allows greater access to the most up to date information about an individual, but it can also significantly speed up the employment checking process and time to hire.

Before carrying out an online status check, employers must:

- obtain consent from the applicant to access information about them online
- verify that the certificate matches the applicant’s identity
- ensure that the certificate provides the right level and type of clearances for the new position.

Employers that have access to the electronic staff record (ESR) can also take advantage of the two-way link with DBS systems. This allows for automatic updates on the criminal record status of all individuals who are subscribed to the service, removing the need for employers to carry out manual periodic checks. This will be of particular benefit where recruiting to highly mobile positions. The two-way link also provides a platform for employers to transfer high level information to the DBS barring team, where they are considering making a referral following an investigation.

Employers using this service will need to maintain good housekeeping of records to ensure they continue to have a legal right to obtain certain criminal record information. They will also need to ensure they deregister their interest in receiving updates, when individuals leave their employment or cease volunteering with them.

Although the DBS automatically notifies individuals when their subscription is about to expire, employers may wish to put some kind of alert system in place to remind staff of their subscription expiry dates. Any lapse in subscription will mean that employers will no longer have access to information and portability will cease to be effective and a new check will need to be obtained before the individual can resubscribe to the service.

More detailed guidance about using the DBS update service can be found on the NHS Employers website.

**Minimum requirements**

**Assessing eligibility for a check**

Not all positions in the NHS are eligible for a DBS check. Employers must ensure they are legally entitled to seek information about an individual’s criminal history before requiring workers and volunteers to have a DBS check.

The trigger for a DBS check and the level of check required is determined by the type of activities the individual in that role will be undertaking and the level of access this will allow them to have with patients.
Employers may find it helpful to refer to our interactive eligibility tool on the NHS Employers website. The tool asks a series of questions to identify whether or not a position meets the criteria for a DBS check. It also provides scenario-based examples to demonstrate how different responsibilities can impact on the level of check required.

Information about the relevant pieces of legislation which permit or require employers to obtain a DBS check, can be found in appendix one.

Further information can also be found in the DBS guide to eligibility available on the gov.uk website.

**When to request a DBS check**

The requirement for a check is triggered when:

- the applicant has never had a DBS check before and the position they are applying for is eligible for such a check
- the applicant is an existing member of staff who has had a DBS check for their original role and they are moving into a new role which requires a different type of check and/or barred list clearances
- concerns have been raised about an employee’s behaviour, conduct or practice [for example, because of criminal activity, actual harm or risk of harm to patients] which would trigger the need for a new check.

Where the position is eligible, it is common practice for employers to undertake a DBS check once a provisional offer of appointment has been made. It is important to make clear that any offer of appointment and/or contract of employment is conditional until a satisfactory DBS check has been obtained.

The disclosure certificate will be sent directly to the individual the check relates to. Employers will therefore need to ask applicants to present their original copy of the disclosure certificate at the earliest opportunity, in order to reduce delays in recruitment.

**Taking up a position before the check outcome is known**

In exceptional circumstances, employers may make a risk based decision to appoint applicants while they are awaiting the outcome of their DBS check in order for them to undertake induction or training.

Where practical, individuals may undertake restricted duties with appropriate safeguards in place but must not be permitted to engage in any form of regulated activity until the outcome of their DBS check is known.

If recruiting into a regulated activity with adults, employers may wish to consider whether using the DBS Adult First service would be appropriate, as outlined on page five.
Existing staff changing roles within the same organisation

If an existing member of staff has had a DBS check for an existing position and they apply for another job within the same organisation which has the same or similar responsibilities, then a new check is not normally required. A new check should always be obtained for positions which require a different level of check or clearances against the barred lists.

It will be useful to make clear to all staff, volunteers and other workers that they have a duty to notify any organisation they are employed or volunteering with, if they subsequently become subject to any cautions, convictions, reprimands or final warnings at any point during their term of appointment. It should also be made clear that any deliberate attempt to omit relevant information in order to secure or retain a position, will result in disciplinary action being taken and possible dismissal. Further information about what to do if information is self-declared or when a check identifies a positive disclosure can be found on pages 16 to 18.

Students

Students undertaking vocational placements as part of a professional qualification are likely to be eligible for a DBS check.

The NHS organisation offering that placement should risk-assess the roles and responsibilities to determine which checks are appropriate and at what level. The check may be obtained by the educational establishment where a training placement has been arranged and the applicant has been provisionally accepted. The NHS organisation will need to obtain written assurance that the educational establishment has carried out an appropriate check at the correct level. Where assurances cannot be provided, the NHS organisation may require a new check.

Work experience/placements

The Protection of Freedom’s Act 2012 stipulates that employers can only legally obtain a DBS check on individuals that are aged 16 and over.

Employers considering appointing individuals under the age of 16 on work experience must carry out a risk assessment to consider what tasks and responsibilities might be appropriate and the level of supervision required to manage that individual.

For individuals aged 16 and over, employers will need to assess the type of activities they are likely to require them to carry out as part of their work experience before determining the level of check required.

Work experience placements may only last for very short periods of time, it may therefore be decided that it would not be practical or proportionate to seek a DBS check. After considering the available information in this standard, employers may determine that a DBS check is not appropriate or possible. In such cases, the reasons for not carrying out a DBS check must be recorded and retained on file. Individuals taking up a placement to observe clinical practice is not in itself a regulated activity and therefore employers should not require an enhanced check
with barred list information. If the placement involves access to patients, employers should consider eligibility against a standard check.

In all cases, employers must ensure that the individual is:

- fully supervised for the full term of their work experience/placement
- only permitted to carry out activities that are appropriate to their level of knowledge, skills and experience
- not permitted to engage in any form of regulated activity.

**Informing applicants about check requirements**

Any requirements to obtain a DBS check should be made clear in the job description, advert and in any correspondence relating to an offer of an appointment. This is to ensure that applicants are clear about what information may be sought about them as part of the recruitment process.

Providing information about your organisation’s policy on recruiting ex-offenders will be helpful to reassure applicants that any information they disclose will be considered on a case-by-case basis and without prejudice. The DBS have provided a [sample policy on recruiting ex-offenders](#) which employers may wish to consider adopting for this purpose.

Providing applicants with a point of contact within the organisation will be useful in case they have any queries about the recruitment process. It will also be important to advise them where they can seek independent advice should they have any questions or concerns about the type of information they might be required to declare. This may include charity bodies such as NACRO or Unlock who provide practical and specialist advice to individuals who may have a criminal history.

If information about an applicant’s criminal history is discussed verbally, we would recommend that this is recorded and stored separately and securely on the applicant’s file. This is in case of any challenges being raised later down the line.

**Reducing delays in processing applications**

Making applications and processing criminal record information can be time consuming. Employers will need to ensure that they factor in adequate time for this in their recruitment processes.

If regularly submitting multiple applications to the DBS, employers may wish to consider using the online electronic service (e-Bulk). This can speed up the checking process, improving an employers’ ability to make timely appointments, and reduces the need for any unnecessary agency spend to backfill vacant positions. Further information about how to register and use the e-Bulk service can be found on the DBS website.
Ensuring DBS application forms are completed correctly

When completing the disclosure application form, employers must clearly indicate which workforce the individual will be working or volunteering with (for example, adults, children, or adults and children). This is to ensure that local police forces include all relevant information that may need to be considered against the role being offered.

The countersignatory must ensure that all application forms are completed correctly to avoid any unnecessary delays in the DBS’ ability to process information in a timely manner. See further guidance on completing disclosure application forms on the gov.uk website.

Portability

The DBS defines portability as meaning the reuse of a disclosure certificate which has been obtained for a position in one organisation and is later used for another position in different organisation.

Disclosure certificates have no term of validity. The only assured means of ensuring that information is as accurate and up to date as it can be, is to obtain a new DBS check or where individuals declare that they are subscribed to the DBS update service, by carrying out an online status check as referred to on pages five and six.

If considering accepting a disclosure certificate that has been issued for another role, employers should take the following factors into account:

— The date of the last disclosure. The disclosure certificate will only provide information that is known about an individual up to the point of its issue. Therefore there is a chance that the individual’s criminal record status may have changed since their last disclosure.

— Whether the new role is the same or similar to their previous role. Any intelligence provided will have been relevant to the individual’s previous role. There is a possibility that additional information could be revealed for a different role.

— Whether the certificate genuine and it relates to the person presenting themselves. The previous disclosure will have been issued based on another organisation’s ID verification process. The new employing organisation should take all necessary steps to assure itself that the certificate is genuine, the information provided relates to the individual presenting themselves, and it can be cross-referenced with other documentary evidence they have provided as part their application.
Verifying pre-disclosed information

Employers can verify pre-disclosed information in a number of ways:

— electronic transfer of data (through ESR or other relevant internal HR/personnel system)
— obtaining a hard copy of the previously issued certificate from the applicant
— verification by the previous employer via confirmation of employment
— by carrying out online status check using the DBS update service (if the applicant declares that they have subscribed to this service).

Periodic and retrospective checks

Employers are not legally required to obtain periodic or retrospective\(^3\) checks on existing members of staff who remain in the same role for the full term of their employment, although this may be required under local policy.

To help employers mitigate risks where recruiting individuals into highly mobile positions (for example, doctors on rotational training programmes, agency nurses and bank workers), we would recommend that employers explore options to encourage individuals to subscribe to the DBS update service because of the increased assurances this can provide when assessing an individual’s suitability to work with vulnerable groups. Employers must however, be mindful that subscription to this service is voluntary. Alternatively, employers may wish to consider the pre-existing nationally agreed easements which are outlined below.

If considering introducing periodic or retrospective checks across a wider range of NHS positions, this should be done in discussion with trade unions and legal advisors. This is helpful to ensure any such requirements are appropriate and proportionate but also to ensure that staff fully understand what’s required and why. It will also give them opportunity to consider how the new requirements might affect them and to ask questions if they are unsure. Seeking legal advice will also be essential to ensure arrangements are fully compliant with requirements under the DBS regime.

Easements

Although legislation does not explicitly refer to employers relying on checks completed by another organisation, it is considered reasonable that employers cooperate in sharing any relevant information to help reduce the risk of appointing someone who is unsuitable or barred from working in certain roles.

\(^3\) A retrospective check refers to checking existing staff who are in eligible positions but who have never had a DBS check. This is because they were appointed prior to the requirement becoming mandatory in the NHS (2002) and they have remained in the same job so the normal trigger for a check has not been triggered.
The easements outlined below are intended to help employers manage risk in an appropriate and proportionate manner where workers are not subscribed to the update service.

**Temporary workers**

It is important for employers to clearly outline the type and level of checks required for different NHS positions in any contract agreement they may have with agencies and other third party staffing providers.

Given that temporary workers are often required to fill positions at short notice, we would strongly recommend that this includes a requirement for them to encourage all healthcare professionals that are being appointed into eligible positions to subscribe to the DBS update service.

Where individuals are not subscribed to the update service, there should be a condition which makes clear that any such workers will be required to have an annual DBS check as a minimum requirement. This requirement does not apply to individuals who have a substantive position with an NHS organisation but are also registered with NHS Professionals to carry out additional temporary work.

Employers must seek written confirmation from staffing providers that the worker has had a satisfactory DBS check at the right level and there are no known reasons which would call their suitability into question.

Where considering appointing workers registered with NHS Professionals and the individual declares that they also hold a substantive post in the NHS, assurances will need to be sought from their substantive employer to confirm that all necessary checks where undertaken when they were first appointed. A new DBS check must always be obtained if the individual subsequently leaves their substantive post, or has had a break in service for a continuous period of three months or more immediately prior to them registering as a temporary worker with NHS Professionals.

Employers may obtain additional checks themselves or require this of staffing providers where the necessary assurances cannot be provided, or where concerns have been raised about a workers suitability which would warrant a new check.

**Doctors in training**

Doctors on educationally-approved training rotations are considered to be in continuous employment for the full term of their training programme.

Given that they may be required to take a number of short-term placements either within one organisation or across a number of NHS organisations throughout their training, we would recommend that they are encouraged to subscribe to the update service when they first start their foundation training. This will remove any unnecessary requirements to carry out repeat checks and delays in them being able to take up their next rotation.
If doctors have subscribed to the update service, the employing organisation should seek the individual’s permission to undertake an online status check to confirm that no additional information has been added since the issue of their original DBS disclosure certificate.

If they are not subscribed to the update service trainees must, as a minimum, be required to have at least one DBS check every three years. Employing organisations will need to seek written confirmation that a DBS check has been obtained within the preceding three year period, and that it is at the correct level.

For those already on a training programme and who are considering subscribing to the update service, we would advise that employers encourage them to do so when their three-yearly DBS check is next due to expire. There is no requirement for trainees to have a new check earlier for the sole purpose of subscribing to the update service, if their three-yearly check is still valid.

**Using an external agency to carry out DBS checks**

In cases where the responsibility for carrying out checks has been delegated to an external body that is registered with the DBS (known as an umbrella body) the employing organisation will need to seek written assurances of the outcome of any checks it carries out on their behalf.

If the disclosure comes back clear (that is if it confirms that the individual does not have any criminal cautions, convictions, reprimands or final warnings) then the employer can accept written confirmation from that agency that this is the case, without the need to see the original disclosure certificate.

If the outcome of the check reveals that relevant information is known and information needs to be considered, employers should either ask the candidate to present their original disclosure certificate, or ask the umbrella body to provide a scanned copy of the disclosure certificate so that they can consider any information that might be relevant to determine the individual’s suitability for a particular role.

**Other types of check**

**Seeking a self-declaration**

Where considered justifiable and proportionate to the position being offered, employers should require applicants to complete a self-declaration form.

This can be useful to ensure applicants have a greater understanding about the type of information that will be requested about them and considered as part of the recruitment process. It also gives applicants an opportunity to identify any additional information or evidence that they may wish to be considered in support of their application.

The following model declaration forms include a range of questions that employers are legally permitted to ask of applicants as part of the recruitment process. The questions were revised in November 2015 to bring them in line with
changes to requirements under the DBS regime, and human rights and equality law.

— **Model declaration form A** must only be used for the purpose of obtaining information for positions which are identified as being exempt (included) in the Exceptions Order of the Rehabilitation of Offenders Act. Exempt positions refer to where employers are legally entitled to obtain a standard or enhanced disclosure and where they can ask applicants to declare both spent and unspent cautions and convictions which are not protected under the DBS filtering system.

— **Model declaration form B** must only be used for the purpose of obtaining information for positions which are included under the provisions outlined by the Rehabilitation of Offenders Act (for example, those that are not eligible for a standard or enhanced disclosure) and where employers are only legally permitted to ask applicants to declare any unspent cautions and convictions. Self-declarations using this form may be verified by obtaining a basic level disclosure through Disclosure Scotland. Further information about basic disclosures can be found below.

For reasons of transparency, employers should make clear to applicants that in completing and signing model declaration form A or B, they are giving their consent for the information provided to be verified by obtaining a relevant criminal record check through the DBS or Disclosure Scotland (as applicable).

The **model declaration forms** and further guidance on **seeking a self-declaration** can be found on the NHS Employers website.

**Basic disclosures**

A basic disclosure is available to anyone, including employers, individuals and the self-employed.

This level of check is not currently offered by the DBS, although plans are in place to provide a basic disclosure service. Further guidance will be made available on the employment checks section of the NHS Employers website once more information is made available by the DBS. In the interim, employers in England and Wales are permitted to obtain basic disclosures through Disclosure Scotland.

Basic disclosures are not mandatory, therefore it is for individual employers to decide locally whether they require this type of check for certain positions of trust. Positions of trust are likely to include (but are not limited to) chief executive/director level positions or senior management roles in finance which would not normally be eligible for a standard or enhanced check through the DBS.

This level of check will only contain the details of convictions which are unspent (current) under the Rehabilitation of Offenders Act 1974, or will state that there are no such convictions held on the Police National Computer (PNC).
Further information about how to obtain a basic level disclosure can be found on Disclosure Scotland’s website.

**Overseas police checks**

If the role you are recruiting to is eligible for a DBS check and the applicant is currently living overseas or has declared that they have spent a significant period of time outside the UK, you will need to:

- ask them to provide evidence of police certificate or certificate of good conduct from the relevant country or countries; and
- obtain a standard or enhanced DBS check (as appropriate to the role) as soon as is reasonably practical in order for the individual to provide the necessary documents. This check requirement applies even if the individual states that they have never lived or worked in the UK before.

You may find it useful to refer to further DBS guidance about obtaining a check where individuals cannot provide the required five year UK address history.

All overseas police checks must be in accordance with the relevant country’s justice system. Additional time to acquire overseas police checks must be factored into the recruitment process. Wherever possible, prompting individuals to obtain a certificate before they leave their residing country will help avoid any unnecessary delays in them taking up their appointment.

The Home Office has provided some useful guidance which outlines how individuals can apply for an overseas police check where there are reciprocal arrangements to share information, including the cost and anticipated processing times.

**Tier 1 and 2 applicants**

The Home Office require all applicants applying to work in the UK under the Tier 1 and (from April 2017) Tier 2 routes to provide a police certificate or certificate of good conduct from the country or countries they have resided in for 12 months or more while aged 18 or over, in the last 10 years prior to their application being made (or less if the individual is aged between 18 -27). This requirement also applies to any of their adult dependents (aged 18 or over). The 12 month period is intended to include any countries the individual has been resident in, in a single period or cumulatively.

For Tier 2 applicants, this requirement does not apply to individuals who have been issued with a certificate of sponsorship prior to 6 April 2017 or to those who are applying to renew or extend their current leave to remain in the UK.

Employers should ensure that any applicants coming through these routes are informed about this requirement as early on in the recruitment process to avoid any unnecessary delays in the Home Office’s ability to process their visa application. For visa purposes, the Home Office will accept a photocopy or scanned copy of the original document. Employers should advise individuals to retain their original certificate as they will be required to present this as part of the recruitment process.
Overseas police certificates and certificates of good standing should be checked in the same way as all other documentary evidence to verify that it is genuine and relates to the individual presenting themselves.

**European Economic Area (EEA) nationals**

The Home Office are currently exploring new arrangements which will help employers seek the necessary assurances against criminal history information provided about workers from EEA countries. Further details will be made available on the employment checks section of the NHS Employers website once more information is known.

**Time spent overseas**

If an applicant has declared that they have spent a continuous or cumulative period of six months or more living or working overseas in the last five years prior to them making their job application, employers should require them to obtain an overseas police certificate from the relevant country/or countries.

**Military and ex-military personnel**

If the period spent abroad is because they were or are serving in the armed forces, employers will need to ask them to provide an extract from their military service record instead of requiring an overseas police certificate.

The extract should expressly disclose any cautions or convictions that the applicant may have been charged with. It should also cover all periods spent overseas of six months or more. The extract must be original and be from a reliable source so that the information can be verified.

**What to do if an overseas police check is not available**

Not all countries will provide criminal history information for employment purposes. If the country concerned is not listed in Home Office guidance, individuals should be directed to the relevant embassy or consulate to seek further advice about what to do. Contact details can be found on the [gov.uk website](https://www.gov.uk).

Where it is genuinely not possible to obtain an overseas police check or certificate of good conduct (for example, there is no procedure for issuing certificates) employers will need to rely on other types of information that can be gained as part of the recruitment process before deciding whether or not to make an offer of employment.

**Dealing with a positive disclosure**

Having a criminal record does not necessarily mean an applicant is automatically barred from being considered for a position in the NHS.

The decision to recruit a person whose criminal record check reveals a conviction, caution or other relevant information, always rests with the employer and must be assessed on a case-by-case basis and without prejudice.
The assessment should take into account the individual’s skills, experience, and ability to do the type of role being offered. It will also be important to consider any additional information the individual has provided as part of their application to evidence their suitability for the post.

The DBS code of practice requires all bodies registered with them to have a policy in place covering the appointment of ex-offenders. As far as possible, the policy should outline the type of cautions and convictions that are likely to be deemed unacceptable for certain positions. For example, where the disclosure indicates that the DBS has made a barring decision against one or both barred lists, this would automatically preclude an individual from working in a regulated activity with the group they have been barred from working with. It is illegal for employers to allow an individual to engage in a regulated activity. Individuals applying to engage or engaging in a regulated activity from which they are barred is also a criminal offence. In any such cases, employers may have a duty to make a referral to the DBS, see further details in appendix four.

Employers may wish to adopt the sample policy on recruiting ex-offenders which can be found on the DBS section of the gov.uk website.

**Assessing criminal record information**

In all cases, a DBS disclosure will only provide the basic facts about criminal offences, warnings and reprimands. It will include the name and date of the offence and, if applicable, details of any sentences/charges. It will not put this into any context.

Employers will need to carefully consider the situation before offering any form of appointment to an individual who is:

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

Employers will need to ensure that they only take into account criminal record information which is relevant to the position being appointed to.

Employers need to consider the following when assessing the relevancy of information.

- Any legal or regulatory requirements. For example, a regulated activity which would prevent you from allowing a person who is barred from working with children and/or adults to work or volunteer with those groups.

- The seriousness of the offence(s). This is important because all offence codes cover a very wide range of crimes that significantly vary in terms of seriousness.
— The age of the applicant at the time of the offence(s). Crimes that date back to when the person was growing up may not be relevant because applicants have put their past behind them.

— If there is a pattern of offending behaviour. Employers should consider whether the applicant has committed a single offence, or whether there is a pattern of offending behaviour or allegations which may indicate that they have not put their offending behind them.

— The circumstances surrounding the offending behaviour and the explanation offered by the individual. Consideration should be given to any change in the applicant’s circumstances since the offence/s or took place. For instance, those who were convicted when they were young, often do not reoffend once they have family or financial responsibilities. It may be helpful to establish the applicant’s attitude at the time of the offence and now.

— Any life experiences they may have had since the offending behaviour to evidence their rehabilitation. Many people reach a point where they want to put their offending behind them and can demonstrate how they have put their talents to more constructive use. For example, volunteering activities or work in the community they have undertaken, or evidence they can provide which demonstrates a change in their home and personal circumstances.

Any discussions at interview should be handled sensitively. The sole purpose of the interview is to gather information from the applicant to assess whether they may pose a risk if appointed to the position being offered.

Employers will need to consider any information obtained at the interview and all other information gathered as part of the wider pre-employment check process when making a decision about the individual’s suitability for a role.

All discussions should be recorded on file, alongside clear reasons reached to appoint or reject the applicant. All information should be stored securely in line with the DBS code of practice.

Information about an applicant’s criminal record should not be disclosed to anyone other than those who have a legitimate reason to know. This may include people directly responsible for the recruitment decision or the applicant’s line manager, if the offence is relevant to their role.

**Discrepancy in information provided**

If there are significant discrepancies between the information the applicant has provided and that contained in the disclosure certificate, further consideration must be given to the new information.

If the applicant has failed to declare information, it is important for the employer to establish why. The DBS code of practice states that an employer should conduct a meeting to discuss any new information revealed with the applicant prior to making a final recruitment decision. This should focus on giving the
applicant opportunity to provide further information and context about the concerns highlighted. Any discussion must be handled sensitively and without discrimination.

Given the complexity of the criminal justice system, it is easy for applicants to misunderstand what offences would be deemed a caution or conviction. In some cases, the discrepancy may have occurred because applicants may not know what information is contained about them until they receive their disclosure certificate.

If however, it is clear from the additional information provided that the individual is unsuitable for a specific role, employers will need to have policies in place to manage the withdrawal of an offer of appointment.

In cases of serious misdirection, for example, if the applicant is applying for a position which involves a regulated activity from which they are barred, the employing organisation has a legal duty to make a referral to the DBS.

**Legal duties to refer to the DBS**

Under the Safeguarding Vulnerable Groups Act 2006, employers have a legal duty to refer information to the DBS if an employee or volunteer has harmed, or poses a risk of harm to vulnerable groups and where they have dismissed them, or removed them from working in a regulated activity with children or adults. This duty equally applies if an individual has resigned before a formal decision to dismiss or remove them from regulated activity has been made.

Further guidance on employer duties to make referrals to the DBS, what information may be required as part of a referral, and how information is considered can be found in appendix four.

**Storage, retention and disposal of records**

DBS disclosure certificates contain sensitive personal data and therefore employers must comply with data protection laws and the DBS code of practice. The code is designed to ensure that any criminal record information released is used fairly and is handled and stored appropriately.

Criminal record information must only be used for the specific purpose it was requested for, and with the applicant’s full consent.

The following information should be recorded and retained on ESR.

- The issue date of the disclosure certificate.
- The level of check requested.
- The position it was requested for.
- Any checks against one or both of the barred lists.
- The unique reference number of the certificate.
- The decision to offer/withdraw the appointment.
The recruiting manager will be informed that the applicant/employee has been cleared to commence in post (subject to all other pre-employment checks).

Any photocopied or electronically scanned copies of the disclosure certificate and self-declaration forms should be stored in secure facilities with strictly controlled access. Access should be limited to persons who need to use this type of information in the course of their normal duties.

Once a decision has been made on whether to appoint or not, the disclosure certificate should be kept in line with the DBS code of practice and data protection laws. Queries about the retention of criminal record information can be directed to the DBS Data Protection Manager by emailing dataprotection@dbs.gsi.gov.uk.

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 background design incorporating the word ‘disclosure’, which appears in a wave-like pattern across both sides of the document. The colour of this pattern is uniform across the front of the disclosure but alternates between pink and green on the reverse
- fluorescent inks and fibers that are visible under UV light
- ink and paper that will change colour in the presence of water or solvent-based liquid.

DBS notifications sent to an employer via the e-bulk service may be transcribed by the organisation in a letter format and will not be printed on DBS secure certificate paper.

If you are unsure whether a DBS certificate is genuine or if you think that it may have been altered, you should contact the DBS on 03000 200 190.
Appendix 1: Legislative drivers

This appendix provides a brief outline of the different pieces of legislation which underpin checks under the DBS regime.

Employers may obtain full versions of each piece of legislation from the UK legislation website.

Rehabilitation of Offenders Act 1974 (as amended in England and Wales)

Under the Rehabilitation of Offenders Act 1974 convictions, cautions, reprimands and final warnings can become spent after a specified period of time (known as the rehabilitation period). Rehabilitation periods vary depending on the sentence or order imposed by the court, not the actual offence.

Once a conviction or caution becomes spent (old) the ex-offender is not normally legally required to declare this information when applying for the majority of jobs, volunteering activities, and education or training courses. However, in order to protect the vulnerable, certain professions within health, social care, and other sectors are exempt from these provisions under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended).

Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in England and Wales)

The Exceptions Order lists specific positions, professions, employment, offices, works and licences which are exempt from the provisions defined by Rehabilitation of Offenders Act.

This means that employers appointing individuals into any of the listed positions or professions are legally entitled to ask applicants to declare all spent and unspent convictions, cautions, reprimands and final warnings which are not protected by the DBS filtering rules and to take these into account as part of their recruitment process.

DBS filtering rules

The DBS filtering rules were introduced on 29 May 2013 under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) 2013. This means that from this date, certain spent or minor convictions and cautions to become protected (or filtered out) when certain conditions are met, and will not be included in a standard or enhanced disclosure certificate issued by the DBS. Further information outlining key considerations for employers can be found in appendix three.

Legal Aid, Sentencing and Punishment of Offenders Act 2012

On 10 March 2014, changes to the Rehabilitation of Offenders Act came into effect in England and Wales under Section 139 of the Legal Aid and Sentencing and
Punishment of Offenders Act 2012. These changes impact on the period of time that needs to lapse before a conviction or caution can be considered spent (old).

Employers will need to review policies and processes to ensure they are only asking applicants for information that they are legally permitted to seek. This is particularly relevant where recruiting to positions which are eligible for a basic disclosure (which requires individuals to declare unspent convictions only).

**Police Act 1997 (as amended)**

The Police Act 1997 (as amended in England and Wales) permits employers to obtain information about an applicant’s spent convictions and cautions by requesting a standard or enhanced disclosure through the Disclosure and Barring Service (DBS).

Section 123 of Part V of the Act makes it a criminal offence for employers to require a standard or enhanced disclosure when considering appointments to positions which are not exempt (included in the Rehabilitation of Offenders Act (Exceptions) Order).

Further information about the different types of DBS check and eligibility can be found on page four of this standard.

**Police Act 1997 (Criminal Records) (Amendment) Regulations 2013**

The regulations outline when an enhanced criminal record certificate may be requested, including assessing a person’s suitability to work with adults and children by obtaining information against the barred lists.

**Part V of the Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2013**

Changes to the Police Act were introduced in England and Wales on 29 May 2013 amending the definition of ‘relevant matters’.

Relevant matters specifically refer to information that is not protected by the DBS filtering rules, and police forces can include when responding to a request for information through a standard or enhanced DBS disclosure. This is because of the potential risk to the vulnerable, and where disclosing this information may add relevant contextual or background to a conviction or a caution which might be invaluable to an employer when they are considering applicants for specific roles.

**Safeguarding Vulnerable Groups Act 2006**

The Safeguarding Vulnerable Groups Act 2006 was created in direct response to recommendations made in the Bichard Inquiry into the Soham murders in 2002. The inquiry questioned the way organisations recruited people to work with vulnerable groups and the way background checks were carried out.
The Act provided the legal basis for setting up the Independent Safeguarding Authority (which was superseded by the Disclosure and Barring Service in 2012) and laid the original foundations for the Vetting and Barring Scheme (VBS). It set out the type of work and activities that a person who has been barred must not do, known as regulated activities.

**Changes under the Protection of Freedom’s Act 2012**

The Protection of Freedom’s Act came into force in 2012 following a review into the criminal record system which was led by the independent government adviser, Sunita Mason. The review was intended to gauge current use of the criminal record regime, including the proposals for a new Vetting and Barring Scheme, and assess whether this remained appropriate and proportionate. As a result, plans to launch the Vetting and Barring Scheme were halted.

The following provisions were enforced under the Act:

- The establishment of the Disclosure and Barring Service (DBS) merging the functions of the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA).
- The introduction of a new definition of regulated activity reducing the scope of eligibility for enhanced checks with barred list information.
- The launch of the DBS update service which allows the portability of disclosure certificates where individuals are subscribed to the service.
- The introduction of a single DBS disclosure certificate which is only issued to the applicant to whom the information relates. Employer certificates are no longer issued as the norm.
- A stipulation that criminal record checks can only be obtained for individuals aged 16 years or over.
- The introduction of a more rigorous relevancy test which police forces need to apply when deciding whether or not to include non-conviction information in response to a disclosure request. This does not impact on their common law powers to share information where it is regarded necessary for safeguarding the most vulnerable.
- Removal of the requirement for police forces to disclose additional information about applicants separately (known as ‘brown envelope’ information).
- A new representation process for individuals providing the opportunity for them to challenge inaccurate information contained in their disclosure certificate.

**Data Protection Act 1998**

On 10 March 2015 Section 56 of the Data Protection Act 1998 was fully implemented. This amendment was specifically put in place to prevent the misuse of Subject Access Requests (SARs).

From this date it became unlawful for an employer to require an applicant or existing member of staff (including workers supplied through an agency or third
party contractor) to obtain a copy of their full criminal record directly from the police, probation service or courts by using their ‘subject access’ rights under the Data Protection Act, and then share it with them. This is known as an enforced subject access request. Any employer in England or Wales who carries out an enforced subject access request may now face prosecution by the Information Commissioners Office (ICO).

Employers in England and Wales must only request this information through a standard or enhanced disclosure via the DBS or a basic disclosure through Disclosure Scotland.

**Changes to data protection from 2018**

General Data Protection Regulation (GDPR) is due to come into effect on 25 May 2018 and employers are encouraged to plan ahead.

Changes will include a mandatory requirement to appoint a Data Protection Officer, increased penalties for breaches of the regulation and removal of charges for providing copies of documents to patients and staff.

NHS Digital is hosting staggered guidance which is being released by the GDPR working group and Information Governance Alliance. The first one Changes in Data Protection legislation: why this matters to you is now available on the NHS Digital website.
Appendix 2: Eligibility for an enhanced without barred list check

This appendix provides information about Regulations 5B and 5C in the Police Act 1997 (Criminal Records) (Amendment) Regulations 2013 which define work with adults and work with children. Although legislation uses the term ‘work’, we would advise that this refers to any form of employment or volunteering activities which meet the criteria as set out below.

Employers may find it useful to refer to our online interactive eligibility tool which provides scenario based examples to demonstrate eligibility for the different types of DBS check.

Employers must always refer to the full copy of the Police Act which can be found on the UK legislation website to ascertain whether there might be other roles and activities which need to be considered for enhanced check without barred list information. Further guidance about eligibility can be found on the DBS website.

Work with adults

The types of activities which will be eligible for an enhanced check without barred list information are provided in the sections below. These activities must be carried out wholly or mainly for adults in receipt of a health and social care service or a specified service – see definitions below.

Definition of ‘in receipt of a health or social care service’

The following adults would be in receipt of a health or social care service:

1. those living in residential or nursing care
2. those living in accommodation provided because they are/have been, attending a residential special school (includes independent schools that specialise in providing education for pupils with special educational needs; further education institutions and 16-19 academies that provide accommodation for young people)
3. those living in sheltered accommodation
4. those receiving domiciliary care
5. those receiving any form of care (excludes personal care), treatment, therapy or palliative care – for example as a hospital patient
6. those receiving support, assistance or advice to help them to be able to live independently or continue to live independently
7. those receiving any service specifically provided for adults because of their age, disability, physical or mental illness (excludes services provided because the adult has - Alexia, an Auditory Processing Disorder, Dyslexia, Dyscalculia, Dyspraxia, Dysgraphia, or Irlen Syndrome)
8. those receiving a service provided to pregnant or nursing mothers who are living in residential accommodation.
Definition of ‘in receipt of a specified service’

1. Those adults lawfully detained in:
   — a prison, remand centre, young offender institution, secure training centre, attendance centre
   — an immigration removal centre or short-term holding facility
   — under immigration escort arrangements.

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

3. Those adults who receive assistance with the conduct of their own affairs:
   — by virtue of a Lasting or Enduring Power of Attorney.
   — by virtue of an order from the Court of Protection.
   — from an Independent Mental Capacity Advocate.
   — from independent advocacy services.
   — from a representative who receives payments under regulations made under the Social Security Administration Act 199.
   — in relation to payments made to them or to another person on their behalf: under arrangements made under section 57 of the Health and Social Care Act 2001, or under section 12A of the National Health Service Act 2006 or regulations made under that section.

Individuals carrying out one or more of the following activities with adults in receipt of a health or social care service, or a specified service will be eligible for an enhanced check without barred list information.

The activity must be carried out by the same person regularly.

1. Providing any form of care, supervision, treatment or therapy. Care in this context excludes the provision of ‘personal care’ which is a regulated activity and would therefore be eligible for an enhanced check with barred list information.

2. Providing any form of teaching, training, instruction, assistance, advice or guidance on their emotional or physical well-being.

3. Moderating a chat room [if the individual carrying out this activity interacts with adult users and has responsibility for monitoring, removing or preventing the addition of content, or controls access to the service].

4. Face-to-face contact with adult residents in a care home.

Regularly is defined [unless otherwise specified] as when the activity is carried out:

   — frequently, at least once a month on an on-going basis
   — intensively, any time on more than four days in any thirty day period
   — overnight, any time between 2am and 6am which gives the opportunity for the person to have contact with the adult.
5. Representing or providing advocacy on behalf of a statutory service and has contact with the adult.

6. Providing transportation wholly or mainly for adults and their carers to and from places where they will be receiving/or have received healthcare services. This excludes taxis which can be used by the general public.

7. People who have responsibility for carrying out inspection functions of a health, social care or specified service. For example, inspections carried out by the Care Quality Commission (CQC) and where any such inspection would permit the individual to have contact with adults who are in receipt of a health, social care, or specified service.

8. People who are specified office holders [see definition in the table below].

9. Employers may also wish to consider carrying out an enhanced check without barred list information for a wider range of activities where staff and volunteers are working in a high security psychiatric hospital such as Broadmoor, Rampton or Ashworth and where the role allows the individual to have direct face-to-face contact with adults, for example, maintenance workers, porters and domestics.

Employers must not require an enhanced check without barred list information on any of the above activities where they are carried out in the course of a family or personal relationship.

‘Family relationships’ are relationships between close family members [for example, parents, siblings, grandparents] and relationships between two people who live in the same household and treat each other as family.

‘Personal relationships’ are relationships between friends or family friends where no money changes hands, or any money that does change hands is not part of a commercial relationship [for example, gifting a friend money for petrol after they have driven you to the hospital].

Specified office holders are defined within legislation as:

— chief executives of local authorities that have any social service functions
— directors of adult social services in England or Directors of social services if there isn’t a dedicated adult social services director
— directors of social services of a local authority in Wales
— charity trustees of charities whose staff or volunteers are eligible for enhanced DBS checks because of their main duties
— people who have to register with the Care Quality Commission in order to provide a health or social care service, i.e. registered managers and service providers
— elected members of a local authority, members of the executive of a local authority or a member of any committee of the executive (including area committees and sub committees) who discharge social services functions which relate wholly or mainly to adults who receive a health or social care service or a specified activity.
Work with children

Work with children includes anyone who is working or volunteering in a supervised capacity with children in a specified role or specified place. Statutory guidance on supervision can be found on the DBS section of the UK government website.

The activity with children must be carried out by the same person regularly.

Specific child-related roles that are eligible for an enhanced check without barred list information are listed below. These activities must involve supervised access to children.

1. Providing any form of care, supervision, treatment, therapy. Care in this context excludes the provision of ‘personal care’ which is a regulated activity and would therefore be eligible for an enhanced check with barred list information.

2. Providing any form of teaching, training, instruction, assistance, advice or guidance on their emotional or physical well-being.

3. Moderating a chat room (when the individual carrying out this activity interacts with children who are users, and has responsibility for monitoring, removing or preventing the addition of content, or controls access to the service).

4. Providing transportation of wholly or mainly for children and their carers or guardians to and from places where they will be receiving/or have received health care services. This excludes taxis which can be contacted and used by the general public.

Regularly is defined (unless otherwise specified) when the activity is carried out:

— frequently, at least once a month on an on-going basis
— intensively, any time on more than four days in any thirty day period; or
— overnight, any time between 2am and 6am which gives the opportunity for the person to have contact with the adult.

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

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

Workers or volunteers employed in an unsupervised capacity in a specified role or specified place will be in regulated activity and therefore will be eligible for an enhanced check with children’s barred list information.
Appendix 3: Filtering rules

This appendix outlines a number of changes which were introduced from 29 May 2013 under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013.

These changes came into force following a Supreme Court judgment in 2013 that found the Police Act 1997 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 to be incompatible with a person’s right to protect their private life under Article 8 of the European Convention on Human Rights.

How it works

Filtering is similar in its concept to the rehabilitation periods under the Rehabilitation of Offenders Act. However, instead of establishing what information should become spent after a specified period of time, filtering establishes the type of criminal record information that will become protected (ie. subject to filtering) and therefore will not be included in a standard or enhanced disclosure certificate.

The change does not mean that information will be removed from the Police National Computer (PNC) and police forces continue to retain their common law powers to include information in the disclosure certificate where they reasonably believe it to be relevant to do so in order to protect vulnerable groups.

Under the filtering rules

— Applicants no longer need to declare any cautions or convictions that are protected, irrespective as to whether they are intending to engage in regulated activity.
— It is unlawful for an employer to take protected cautions and convictions into account when making a decision to employ a person or dismiss an existing employee.

What it applies to

For adults (persons aged 18 or over at the time of the offence)

An adult conviction will be removed from a DBS check only when it meets the following four conditions.

1. Eleven years have elapsed since the date of the conviction.
2. It is the person’s only conviction (multiple convictions will always be included).
3. The conviction did not result in a custodial or suspended sentence (any conviction resulting in a custodial or suspended sentence will always be included).
4. The conviction does not appear on the list of specified offences relevant to safeguarding.
An adult caution (including reprimands and final warnings) will be removed after six years have elapsed since the date of the caution and if it does not appear on the list of specified offences. There is no limit to the amount of cautions that can be filtered.

**For juveniles (persons under the age of 18 at the time of the offence)**

A juvenile conviction will be removed from a DBS check only when it meets the following four conditions.

1. Five and a half years have elapsed since the date of conviction.
2. It is the person’s only conviction (multiple convictions will always be included).
3. The conviction did not result in a custodial or suspended sentence (any conviction resulting in a custodial or suspended sentence will always be included).
4. The conviction does not appear on the list of specified offences relevant to safeguarding.

A *youth caution* (including reprimands and final warnings) will be removed after two years have elapsed since the date of the caution and if it does not appear on the list of specified offences. Again there is no limit to the amount of cautions that can be filtered.

The DBS have provided guidance outlining the type of criminal offences which would never be filtered from a disclosure certificate.

**What this means for employers**

Employers will need to ensure they regularly review their policies and recruitment processes to ensure they are not asking applicants for information they are not legally entitled to. This includes any information they may require as part of a request for a self-disclosure, application form, or during the interview process.

We have revised our *model declaration forms* to ensure applicants can make a more informed decision about what they need to declare to a prospective employer. We have also included links to further sources of information, if they are still unsure about what they need to declare or if they have any queries.
Appendix 4: Legal duties to refer to the DBS

Who can make a referral to the DBS?

Bodies that have the power to refer

The following bodies have the power to make referrals to the DBS because of their regulatory roles and responsibilities for safeguarding:

- local authorities
- education authority in Northern Ireland
- health and social care bodies in Northern Ireland
- keepers of register in England, Wales or Northern Ireland
- supervisory authorities in England, Wales or Northern Ireland.

Organisations that have a legal duty to refer

If you employed or engaged a person to work or volunteer in a regulated activity, you have a legal duty to refer to DBS where certain conditions are met. This includes where the worker has been supplied by a personnel supplier for example, an agency or third party contractor.

The duty to refer also applies even when a report has already been made to another body, such as a professional regulatory body. This helps the DBS to make sure they have all the relevant information to fully consider a case, and decide whether or not the individual needs to be added to one or both the children’s and adults barred lists.

A person/organisation that does not make a referral when the legal duty conditions are met will be committing an offence and, if convicted, may be subject to a fine of up to £5,000.

The DBS have produced a referral flowchart to help you decide if you need to make a referral.

When to refer

Employers must make a referral to the DBS when the following two conditions are met.

Condition 1

You have withdrawn permission for a person to work or volunteer in regulated activity with children and/or adults, or you move the person to another area of work that isn’t regulated activity.

This would also include situations where you may have taken the above action but the person resigned, retired, was made redundant, or left. For example, a nurse resigns when an allegation of harm to an adult patient is first made.
Condition 2

You believe the person has:

- engaged in relevant conduct (ie. has harmed a child and/or an adult through their action/inaction)
- satisfied the harm test (ie. poses a risk of harm to a children and/or adults)
- received a caution or conviction for a relevant offence [either with or without the right to make representations] and therefore is subject to an automatic bar from engaging in a regulated activity.

Relevant conduct

Relevant conduct in relation to children may include, but is not limited to:

- any action or inaction that causes emotional or psychological anguish
- any intentional physical contact that results in discomfort, pain or injury
- any form of sexual activity with a person under the age of consent. This also includes the possession of sexually explicit materials relating to children or materials depicting sexual violence to children
- any form of neglect ie. failure to identify and/or meet their care needs.

Examples of harm to children can be found in guidance which is available on the DBS section of the gov.uk website.

Relevant conduct in relation to adults may include, but is not limited to:

- any action or inaction that causes emotional or psychological anguish
- any financial abuse for example, this would include the misuse of money, valuables or property belonging to an adult
- any intentional physical contact that results in discomfort, pain or injury
- any form of coercion or force to take part in sexual acts
- any form of neglect i.e. failure to identify and/or meet their care needs
- any verbal remark or comment that is deliberately intended to cause distress.

Examples of harm to adults can be found in the DBS section of the gov.uk website.

Have satisfied the harm test (poses a risk of harm)

To satisfy the harm test there needs to be credible evidence of a risk of harm to children and/or adults receiving a regulated activity or service. This may include statements made by an individual regarding a workers conduct or behaviour which would raise a patient safety concern.

For a case to be considered as a risk of harm, relevant conduct does not need to have occurred but there must be tangible evidence rather than a ‘feeling’ that a person represents a risk to children and/or adults receiving a regulated activity or service.
Have received a caution or conviction for a relevant offence

Anyone convicted or cautioned for a serious offence will be automatically barred from working in a regulated activity with children and/or adults (subject to the consideration of representations where permitted). You can find out more about automatic barring by reading guidance on the DBS section of the gov.uk website:

— relevant offences in England, Wales, Scotland and Northern Ireland
— relevant offences for England and Wales

If an individual has applied to work or engage in a regulated activity with you, or an existing employee, volunteer or other worker is engaging in a regulated activity and you know that they have been convicted or cautioned for an automatic barring offence, you have a legal duty to make a referral to the DBS.

Other considerations

There may be times when the legal conditions, as described above, have not been met. This includes where, in the interests of safeguarding children and/or adults receiving a regulated activity or service, you reasonably believe that information should be shared with the DBS. This may include where information has been shared by the police or a safeguarding professional, but where you do not have enough evidence to dismiss or remove that person from a regulated activity or service.

The DBS are required by law to consider any and all information sent through to them by any source, whether or not the legal referral conditions are met. The DBS will use their legal powers and barring processes to determine whether or not the person in question should be barred from working in regulated activity with children and/or adults.

If you want to make a referral to the DBS where the referral conditions are not met, you should do so in consideration of relevant employment and data protection laws.

You may want to seek your own legal advice in relation to these cases.

The DBS has a specific interest in safeguarding issues, you may therefore be required to refer misconduct/performance issues to another body, if there are no safeguarding concerns.

How to make a referral

Employers will find it useful to refer to the referral guidance on the DBS section of the gov.uk website before completing the referral form. This guidance outlines the type of information that is required to be provided to the DBS where considering making a referral.

Employers should also be aware of their legal duty to share information when requested by the DBS in response to a referral they may have received from the
public, police, or other body which relates to someone in their employment or someone they permit to engage in regulated activity.

In such cases, employers should provide as much information as possible. The DBS do not require employers to obtain or provide information or evidence that they do not have access to.

The DBS accept referrals made by post or email. Referrals less than 10MB in size can be emailed to: dbsdispatch@dbs.qsi.gov.uk

Any information shared as part of a referral may be used by the DBS and could be disclosed to the referred person, or relevant bodies, as deemed necessary to safeguard vulnerable groups, including children. Employers will find it useful to refer to the DBS data protection and security guide when considering the type of information they will be required to share when making a referral.