Appendix 1: Criminal record and barring check decision tree

Before you begin:

Not all NHS staff will be eligible for criminal record and barring checks. At the point of advertising a position, employers must make an assessment against the roles, activities and responsibilities of the particular position to determine eligibility.

Is the position covered under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended)?

Individuals are likely to be eligible by virtue of section 13 i.e. any employment which is concerned with the provision of health services and which is of such a kind as to enable the holder to have access to persons in receipt of such services in the course of their normal duties. However, there are other provisions within the Exceptions Order that may be relevant.

Please refer to the legislation available at www.legislation.gov.uk

Yes

Is the position a REGULATED ACTIVITY with children and/or adults as defined by the Safeguarding Vulnerable Groups Act (amended by the Protection of Freedoms Act 2012)?

For further information about 'regulated activity' with adults please refer to the factual note issued by the Department of Health at: www.wp.dh.gov.uk/health/2012/08/new-disclosure-and-barring-services-definition-of-regulated-activity/

For further information about 'regulated activity' with children please refer to the factual note issued by the Department for Education at: www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/a00209802/disclosure-barring

Yes

Individuals seeking work in regulated activity must be checked against the barred list(s) through the process of an enhanced criminal record disclosure.

You must indicate on the criminal record application form whether the individual is working or volunteering with children and/or adults.

Does the barred list check show the individual is barred from engaging in regulated activity with children or adults?

Yes

The individual **must not** be appointed into regulated activity with the vulnerable group from which they are barred. It is an offence for any person who is barred to apply for, or engage in, regulated activity. It is also an offence for an employer to knowingly allow a barred person to engage in regulated activity.

A barred person may undertake a position not in regulated activity where they meet all other pre-employment checking criteria. However, employers should carry out an appropriate risk based assessment taking into consideration all information within the disclosure to assure patient safety.

Employers should ensure that robust safeguards are in place to manage that individual, such as supervision or restricted access to certain areas of the building.

No

Is any relevant information disclosed, for example criminal convictions?

Yes

Carry out risk based assessment to determine whether the conviction is relevant to post, whether they pose any risk or potential risk to patient safety.

If the risk assessment raises patient safety concerns the recruitment should not proceed.

Any provisional offer of appointment should be withdrawn.

If the individual meets all other pre-employment criteria and the risk assessment decision is to recruit, safeguards should be put in place as appropriate.

Confirm appointment

No

If the individual meets all other pre-employment criteria

Confirm appointment

No

Since 10 September 2012 the new definition of 'regulated activity' has reduced the number of individuals who must be checked against the barred lists. However positions that were eligible for an enhanced disclosure with a barred list check before 10 September will remain eligible for enhanced disclosures without barred list information.

Was the position eligible for an enhanced disclosure before 10 September? i.e. did the position fall into the pre 10 September definition of regulated activity? http://www.legislation.gov.uk/ukdsi/2013/9780111537718/contents

Yes

Continue to obtain an enhanced level criminal record disclosure but WITHOUT barred list checks.

No

The position is not 'regulated activity' but does it involve the individual having access to patients in the course of their normal duties?

Please note that access to information about patients or patient records only does not constitute 'access'.

Yes

Continue to obtain a standard level criminal record disclosure.

No

The position is not eligible for a criminal record check at standard or enhanced level*

If the individual meets all other pre-employment criteria

Confirm appointment

Employers have a legal duty to refer information to the DBS. Further information can be found at www.gov.uk/disclosure-and-barring-service-criminal-record-checks-referrals-and-barring

Please note:
Criminal record and barring checks form only part of the pre-employment process, equally important are verification of identity, right to work, registration and qualification, employment history and references, and occupational health checks. For further information please refer to the NHS Employment Check Standards at: www.nhsemployers.org/employmentchecks

* In certain circumstances, for example, people working in 'positions of trust' e.g. chief executives, senior management or finance managers you may wish to ask prospective employees to apply for a basic disclosure from Disclosure Scotland. This level of disclosure contains information about unspent (current) convictions. Further information is available at: www.disclosurescotland.co.uk