

PRE-EMPLOYMENT SCREENING

A GOOD PRACTICE GUIDE

EDITION FOUR: SEPTEMBER 2011

Disclaimer:

Reference to any specific commercial product, process or service by trade name, trademark, manufacturer, or otherwise, does not constitute or imply its endorsement, recommendation, or favouring by CPNI. The views and opinions of authors expressed within this document shall not be used for advertising or product endorsement purposes.

To the fullest extent permitted by law, CPNI accepts no liability for any loss or damage (whether direct, indirect or consequential and including, but not limited to, loss of profits or anticipated profits, loss of data, business or goodwill) incurred by any person and howsoever caused arising from or connected with any error or omission in this document or from any person acting, omitting to act or refraining from acting upon, or otherwise using, the information contained in this document or its references. You should make your own judgement as regards use of this document and seek independent professional advice on your particular circumstances.

Contents

Introduction	2
What is pre-employment screening?	3
Pre-employment screening policy	7
Identity	12
Prevention of illegal migrant working – verification of nationality and immigration status.....	20
Qualification and employment checks	27
Criminal record checks	32
Financial checks	39
Overseas checks	40
Media searches	45
Commercial sector pre-employment screening services	46
Secure contracting	48
Decision making.....	53

Appendices:

A: Example of a pre-employment timetable.....	55
B: Example of an application form	56
C: Example of a verification record	57
D: Example of a reference report form	59
E: Example of a nationality and immigration status form	60
F: Right to work and nationals from the European Economic Area (EEA)	62
G: Right to work Q & A	66
H: Points-based system	72
I: Criminal convictions – rehabilitation periods	76
J: Example of a criminal record declaration	77

Glossary	78
-----------------------	----

Introduction

The aim of this guidance

This document provides detailed information of good practice in pre-employment screening, a fundamentally important element of any personnel security regime. It brings together a range of advice and guidance from government departments and other relevant organisations as a 'one-stop' reference handbook focusing on:

- verifying identity
- verifying the right to work in the United Kingdom (UK)
- confirming employment history and qualifications
- verifying criminal record

This guidance has been written for organisations that own or operate assets, services and systems which form part of the UK national infrastructure (NI). More specifically, it is intended to support individuals within those organisations who work in Human Resources and Security departments and therefore have the responsibility for pre-employment screening. It may also be of value to the wider business community and we would encourage these organisations to use this document as they see fit.

Whilst this guidance aims to be as comprehensive as possible, it is not exhaustive and organisations should seek professional advice where necessary. We have provided contact information for bodies that may be able to provide further assistance.

This document should be read in conjunction with other guidance published by CPNI, in particular:

- *Good practice guide on pre-employment screening – document verification*
- *Disclosure of criminal records in overseas jurisdictions*
- *Media screening – use of the internet in employment decisions: a good practice guide*
- *Risk assessment for personnel security: a guide*
- *Ongoing personnel security: a good practice guide*
- *Personnel security in offshore locations*

These guidance documents can be downloaded from www.cpni.gov.uk.

What is pre-employment screening?

Pre-employment screening seeks to verify the credentials of job applicants and to check that the applicants meet preconditions of employment (e.g. that the individual is legally permitted to take up an offer of employment). In the course of performing these checks it should be established whether the applicant has concealed important information or otherwise misrepresented him/herself. To this extent, pre-employment screening may be considered a test of character.



The ways in which screening is performed varies greatly between organisations; some methods are very simple, others are more sophisticated. In every case, the aim of the screening is to collect information about prospective or existing staff and use that information to identify any individuals who present security concerns.

The importance of pre-employment screening

Pre-employment screening is central to a holistic approach to security and aims to ensure that an organisation counters the full range of threats it faces, including terrorism, fraud and reputational damage.

Pre-employment screening will ensure that you confirm the identity of your employees in a way that would assist any subsequent investigation into insider activity.

An insider is someone (a permanent, temporary or contract worker) who exploits, or has the intention to exploit, their legitimate access to an organisation's assets for unauthorised purposes. Pre-employment screening will help to reduce the likelihood of such individuals or organisations gaining access to harm your business.

The HMG Baseline Personnel Security Standard

In July 2006, the Cabinet Office introduced a Baseline Personnel Security Standard (BPSS - generally referred to as the 'Baseline Standard') to address identified weaknesses in government recruitment practices. It aims to provide, by application of a common 'standard', an appropriate level of assurance as to the trustworthiness, integrity and probable reliability of prospective civil servants, members of the armed forces, temporary staff and government contractors generally. It also forms the basis for any subsequent National Security Vetting requirement.

The Baseline Standard, implemented in March 2007 and updated with version 3.0 in February 2011, comprises verification of the following four main elements:

- identity
- nationality and immigration status (including entitlement to undertake work in question)
- employment history (minimum past three years)

- unspent criminal convictions

Additionally, prospective employees are required to give a reasonable account of any significant periods (six months or more in the past three years) of time spent abroad.

This guidance closely reflects the Cabinet Office guidance on the Baseline Standard and describes the same types of checks. However, the Baseline Standard contains some advice and supporting mechanisms which are specific to the government sector and are not, therefore, included in this document. Further information on the Baseline Standard can be found at www.cabinetoffice.gov.uk/resource-library/security-policy-framework.

National Security Vetting (NSV)

NSV seeks to determine an individual's suitability to hold posts with long-term, frequent and uncontrolled access to Government protectively marked material, or for posts involving access to individuals, establishments or information assessed to be at risk from or of value to terrorists. It involves a range of screening checks that build on the basic verification measures covered in this guidance with additional security checks and searches of police records.

British Standard 7858

BS7858 is the British Standard that sets out recommendations for the security screening of individuals to be employed in an environment where the security and safety of people, goods or property is a requirement of the employing organisation's operations or where such screening is in the public interest.

The Standard was first published in 1996 with version 3 in 2006 (BS7858:2006), amended in 2009, referred to as A2: 2009. The Standard is used widely in the private sector by organisations in their pre-employment screening processes, and by third party screening companies undertaking pre-employment checks for organisations. BS7858:2006+A2:2009 comprises the following elements:

- proof of identity and address
- details of education and employment
- criminal records check
- financial check
- checking of at least two character references

The Standard sets the relevant screening period at not less than five years with no unverified gaps greater than 28 days, but states that organisations should lengthen this period based on 'contractual or legislative considerations' or 'specific industry standards'. The Standard recommends that screening should be completed no later than 16 weeks after employment has commenced (CPNI recommends that, where possible, pre-employment screening is completed before commencement of employment or, depending on outstanding checks, as soon as possible after – see the chapter *Decision making*). Further information on BS7858:2006+A2:2009 can be found at www.bsigroup.co.uk

Legislation

Pre-employment screening practices and procedures must be compatible with all relevant legislation. The following legislation must be considered to ensure that pre-employment screening procedures do not interfere unduly with the individual's right to privacy, disclose any information which organisations may find in an inappropriate way or without due cause, or use information in a discriminatory way.

Data Protection Act (DPA) (1998) - concerns the processing of personal information of individuals. Information on individuals kept by an employer, or a third party contractor or screener will fall within the DPA and its Code of Practice. The DPA strikes a balance between the employer's requirements and the individual's rights. Checks should be carried out on a non-discriminatory basis and privacy rights must be respected.

The DPA stipulates that personal data must be fairly and lawfully processed, used only for the intended purpose, is adequate, relevant and not excessive, is accurate and up to date, is not kept longer than is necessary, is processed in line with the rights of the individual, is held securely, and is not transferred to other countries without adequate protection.

An individual's refusal to undergo an essential check may lead to refusal of employment and the individual must be made aware of this. This differs from making a check a condition of employment where it may not actually be necessary. Under Subject Access, an individual is entitled to view their personal data. The individual can object to the processing of information which is likely to cause damage or distress, decisions being taken by automated means, and have inaccurate personal data rectified, erased or destroyed.

For further information on the DPA and its Code of Conduct, please contact the Information Commissioner's Office (www.ico.gov.uk).

Employment Rights Act (1996) - concerns written contracts, flexible working and fair dismissal.

Equality Act (2010) - codifies the Acts and Regulations which form the basis of anti-discrimination law. The Act replaces the Equal Pay Act (1970), Sex Discrimination Act (1975), Race Relations Act (1976), Disability Discrimination Act (1995) (except for some Northern Ireland provisions), and Employment Equality Regulations for Religion or Belief (2003), Sexual Orientation (2003) and Age (2006).

Human Rights Act (1998) – Article 8 ensures that everyone has the right to respect for their privacy and family life, their home and correspondence. An individual has the right to live his or her own life with such personal privacy that is reasonable in a democratic society, whilst taking account the rights and freedoms of others. Interference with an individual's right to privacy under Article 8 must be in accordance with the law, have a legitimate purpose, and be proportionate to what it seeks to achieve.

Immigration Asylum and Nationality Act (2006) - concerns nationality and right to work in the UK. This is covered in the chapter *Prevention of illegal migrant working*.

Rehabilitation of Offenders Act (1974) and the Rehabilitation of Offenders (Northern Ireland) Order (1974) - concerns the requirements to disclose spent and unspent convictions as part of a criminal records check. This is covered in the chapter *Criminal record checks*.

Trade Union Reform and Employment Rights Act (1993) - concerns main conditions of employment, leave, protection against unfair dismissal.

Pre-employment screening policy

Pre-employment screening should be an integral part of your policies, practices and procedures for the recruitment of employees. Robust pre-employment screening policies will ensure that processes are consistent, fair and efficient, maintain an organisation's reputation and reduce the risk of business disruption or financial losses. If you have conducted a personnel security risk assessment (www.cpni.gov.uk/advice/Personnel-security1/risk-assessment), then this will help you to decide on the levels of screening that are appropriate for different posts. This chapter highlights some of the issues to consider when planning and preparing a pre-employment screening programme.

Who should be involved in the process?

The size and structure of your business and the level and role of the applicant's position is likely to determine which areas of your business have a stake in ensuring that pre-employment screening is effective. The most active participants in the process are likely to include the following:



Human Resources (HR)

In the majority of organisations HR departments will take the lead on the selection and recruitment of employees. As such, it is the HR department that is normally responsible for conducting or commissioning verification checks. It is therefore vital that HR personnel have a good understanding of pre-employment screening.

Security personnel

In a significant number of organisations, the security department is responsible for pre-employment screening. Even where this is not the case, the security department will be responsible for dealing with security concerns that emerge from the pre-employment screening checks, as well as decisions about the levels of check that may be required for different posts.

Business owners and managers

The involvement and support of business owners and managers is crucial to implementing robust pre-employment screening. They usually play a greater role in recruitment in smaller organisations, including leading the interview process.

Legal personnel

Legal personnel play a critical role in the development of pre-employment screening processes. They should be consulted in the production of all documents, forms and processes that are to be used for screening purposes.

Other relevant departments

Other departments who may be involved include regulatory bodies, staff representation and unions, procurement and auditors.

Ownership of the pre-employment screening process

The departments involved in the pre-employment screening process may have competing interests, for example HR who are responsible for screening candidates and business managers who need urgently to recruit staff. Due to the pressures of recruiting staff and regardless of the professionalism of the staff involved, screening procedures may not always be followed correctly and/or relevant information is not shared with all appropriate parties.

It is advisable for only one department to be responsible and accountable for pre-employment screening, and for a senior member of staff within that department to be identified to lead the process. This individual should then work with all relevant parts of the organisation to ensure that protocols such as information sharing are agreed and adhered to and that the whole business understands the importance of pre-employment screening.

Other duties for the lead department may include training the teams involved in the screening process and ensuring that screening procedures are appropriately designed to fit within the overall business plan.

Use of third parties

If your business uses an external screening business or recruitment agency, it is important to be clear how their services fit into your processes and standards. You should be clear whether the business is conducting part of or all of the checks for each applicant. Where you are asking a third party to make judgements then you should ensure that these follow agreed decision making guidelines. However, it is your responsibility for making any final decision which will impact on your business.

Structuring the pre-employment screening process

You may find it helpful to produce a timetable for scheduling pre-employment screening within the overall recruitment process (see Appendix A). Equally, you may find it useful to maintain a verification record detailing which checks have been performed and confirming the result of these checks. An example of a verification record is provided at Appendix C.

Application form

The use of an application form is considered good practice as this is a standardised form where the applicant can provide all relevant information and confirm (by signature) that information is correct.

The job application form should provide the majority, if not all of the information required for pre-employment screening. A list of likely information requirements is provided at Appendix B and these are also discussed in the following chapters.



The form should highlight the fact that pre-employment screening will take place and that the applicant must provide their consent for checks to be undertaken. It should also include a clear statement that lies or omissions are grounds to terminate the hiring process or employment no matter when they are discovered. This is important legally but it can also have significant deterrent value.

You may need to customise the application form depending on the post. For example, you may not require education history for semi-skilled staff such as cleaners – but you may require additional information for senior posts. Applicants should be clear what information is required, and employers should not request information which is irrelevant to the post.

Interviews

As well as providing an opportunity to discuss the candidate's suitability for employment, an interview will play an integral part of the pre-employment screening process because:

- it encourages applicants to be honest;
- it allows the employer to find out missing information which is relevant to the pre-employment process and to probe candidates about their responses or for additional information;
- it provides a good opportunity to add to the overall assessment of the applicant's reliability and integrity.

A photograph of a pre-employment screening form titled "EMPLOYMENT INTERVIEW". The form includes sections for "DESIRED EMPLOYMENT", "EDUCATION", and "SCHOLARSHIPS". It also has checkboxes for "GENERAL INTERVIEW" and "PROMOTION INTERVIEW". The form is partially obscured by a ruler.

Decision making

Most of the pre-employment screening checks do not require interpretation; the information provided is either true or false. However, for checks where judgement is involved, it is advisable to agree some decision making guidelines. For example, if you conduct a credit worthiness check it is recommended to decide what is an unacceptable credit report.

Your business's pre-employment screening strategy should set out how you deal with the results of all checks, particularly potentially adverse information. It is not necessary to complete all pre-employment screening where initial checks indicate that an applicant has provided inaccurate information. The chapter *Decision making* provides more information on decision making.

Pre-employment screening levels

The opportunity to cause harm or damage is a key consideration in any personnel security risk assessment and is an important factor in determining the level of checks that are required. You do not need to follow a laborious process of assessing this, but you may find it helpful to review the different types of risks that different roles present and consider how these might affect the level of screening required.

One of the most important aspects of a pre-employment screening strategy is deciding what pre-employment checks to perform for each post. Some employers perform the same checks for all new applicants, regardless of the post. However, this can add unnecessary delays to the recruitment process and may not be the most efficient pre-employment screening strategy. You may prefer to vary the screening process according to the risks that the post presents.

If you have not already established screening levels, then we would encourage you to use the following bullet points as a template:

Minimum level of checks

As a minimum employers should:

- verify identity (including residency)
- confirm right to work in the UK
- ensure that applicants complete self-declaration criminal record (see Appendix J)

Employers must be satisfied about a prospective employee's identity (because of the risks of identity fraud), and that the applicant has a right to work in the UK. Failure to do so can lead to subsequent civil and criminal liabilities.

Medium level of checks

- verify identity
- confirm right to work in the UK
- ensure that applicants complete a self-declaration criminal record form
- Basic disclosure (criminal)
- most recent academic qualifications
- relevant professional qualifications
- most recent employer reference (at least three years, preferably five years)
- media checks
- confirmation with past employers of dates of employment, posts held and reason for leaving

High level of checks

- verify identity
- confirm right to work in the UK

- ensure that applicants complete a self-declaration criminal record form
- Basic, Standard or Enhanced disclosure if relevant to the job
- all academic qualifications
- relevant professional qualifications
- employment references to cover at least three years (preferably five to ten years)
- Basic confirmation with past employers of dates of employment, posts held and reason for leaving line manager references (if possible)
- media checks
- financial enquiries

Post-employment screening

There may be instances where further screening is required once an individual has joined an organisation. These could include transfer to a post with additional responsibilities (e.g. financial, HR), promotion, commencement of a new contract, or regulatory or national security vetting requirements. The checks may be similar to those outlined above, but may not require as much detail as the initial screening checks. Post-employment screening checks must be reasonable, proportionate, and meet an organisation's business requirements. They should not be used as part of an ongoing investigation or disciplinary procedure.

Pre-employment screening policy – checklist

1. Make pre-employment screening an integral part of your recruitment process.
2. Ensure that applicants are informed in writing that any offer of employment will be subject to the satisfactory completion of pre-employment screening checks, whether or not the individual has already been granted access to the site.
3. Ensure your screening processes are legally compliant at all stages (including the wording of the application form).
4. Involve all the relevant departments in your organisation, and ensure they communicate and share data effectively.
5. Identify an 'owner' of the pre-employment screening process.
6. Incorporate specialist businesses into your strategy if appropriate.
7. Ensure that the application form requests all relevant information, including consent for further checks, and outlines your screening policies.
8. Establish decision making guidelines for consistent and transparent judgments about information.
9. Have a clear understanding of the thresholds for denying someone employment.
10. Be clear how you deal with fake or forged documents (see the chapter *Identity*).
11. Collect data on the results of the pre-employment screening process (e.g. incidence of false qualifications or criminal record).

Identity

Of all the pre-employment screening checks, identity verification is the most fundamental. It should be the first check that is performed and you should not undertake any other parts of the screening process until you are satisfied that an individual's identity is satisfactorily proven.



What is identity?

There are three elements to a person's identity:

Biometric identity: the attributes that are biologically determined and unique to an individual, i.e. fingerprints, voice, retina, facial structure, DNA profile.

Attributed identity: the components of a person's identity that are given at birth, including name, place of birth, parents' names.

Biographical identity: an individual's personal history, including:

- registration of birth
- education and qualifications
- electoral register information
- addresses
- details of taxes and benefits paid by or to the individual
- employment history
- registration of marriage/civil partnership
- mortgage account details
- insurance policies
- interactions with banks, utilities etc.

Identity fraud

Identity fraud is an increasingly common offence. There are four main reasons why individuals use false identities:

To avoid detection – individuals may wish to remain anonymous and/or undetected, e.g. illegal immigrants, money launderers, terrorists, disqualified drivers, wanted criminals and those with a poor credit history.

For dishonest financial gain – this can include credit fraud, welfare benefits fraud or falsifying educational qualifications to obtain employment.

To avoid financial liability – this can include failing to pay debts, taxes and child maintenance.

To legally obtain genuine documents such as passports through the use of false 'breeder' documents (i.e. those documents required to obtain passports, such as birth certificates which can have few or no security features).

The above reasons highlight the importance of using a comprehensive document verification process, focussed on establishing the authenticity of every document a prospective employee provides, not just the passport and/or photo driving licence.

How to verify identity

The objectives of verifying identity are to relate your prospective employee to the information they have given about themselves by:

- determining that the identity is genuine and relates to a real person;
- establishing that the individual owns and is rightfully using that identity.

The most common methods for verifying identity are:

- requesting original documents – a ‘paper-based’ approach, and checking an individual’s personal details against external databases – referred to as an ‘electronic’ approach.

The paper-based approach to verifying identity

By examining documents presented by a candidate, you are aiming to corroborate their:

- full name – forenames and last name
- signature
- date of birth, and
- full permanent address



You should require candidates to provide:

1. An official document containing their photograph, such as a passport or UK driving licence; this will provide you with an opportunity to compare the photograph with the individual presenting the document (in order to prevent instances of ‘look-a-likes’), and
2. An original document providing their current address, such as a utility bill or bank statement (this is increasingly difficult as more are produced online, page 14 provides other documents you can accept), or the most recent council tax bill or mortgage statement.

Your level of assurance about an individual’s identity will increase with the number and quality of the documents received. It is important to stress that documents do not have equal value.

The ideal document:

- is issued by a trustworthy and reliable source
- is difficult to forge
- is dated and current

- contains the owner's name, photograph and signature
- requires evidence of identity before being issued

Ideal documents include passports, driving licences, and national identity cards. Where a signature has not previously been provided (e.g. because of an e-application) the individual should be asked to provide it at a later date (e.g. at interview) for checking against relevant documentation.

Original documents should be used for identification purposes. You should not accept any copies, unless they have been certified by a solicitor. Documents that you might consider requesting include:

- current signed full passport, national identity card and/or other valid documentation relating to immigration status and permission to work (see *Right to Work* chapter)
- current UK photo card driving licence
- current full UK driving licence (old version)
- current Biometric Residence Permit (formerly the Identity Card for Foreign Nationals)
- full birth certificate
- adoption certificate
- marriage / civil partnership certificate
- divorce, dissolution or annulment papers
- gender recognition certificate
- current benefit book or card or original notification letter from the Department for Work and Pensions (DWP) confirming right to benefit
- building industry sub-contractor's certificate issued by Her Majesty's Revenue & Customs (HMRC)
- recent HMRC tax notification
- current firearms certificate
- police registration document
- HM Armed Forces identity card
- proof of residence from a financial institution
- recent original utility bill or certificate from a utility company confirming the arrangement to pay for the services at a fixed address on pre-payment terms
- confirmation from an Electoral Register search that a person of that name lives at that address*
- local authority tax bill (valid for current year)*
- bank, building society or credit union statement /passbook with current address*
- recent original mortgage statement from a recognised lender *
- current local council rent card or tenancy agreement *
- record of home visit *
- court order *

*If these documents are submitted then the date should be within the last 6 months – unless there is good reason for it not to be – and should contain the name and address of the applicant.

What to do if the applicant cannot provide photographic documentation

If the inability to provide photographic proof of identity appears to be a genuine problem, you should ask the individual to provide additional documents from the above list and a passport-sized photograph of himself/herself. This should be endorsed on the back with the signature of a 'person of standing' in the individual's community such as a magistrate, medical practitioner, officer of the armed forces, teacher, lecturer, lawyer, bank manager or civil servant, who has known the individual for at least three years. The photograph should be accompanied by a signed statement from that person, indicating the period of time that the individual has been known to them.

You should check the statement to ensure that the signature matches the one on the back of the photograph, and that it contains a legible name, address and telephone number. You must then contact the signatory to check that he or she did, in fact, write the statement.

Verifying addresses

The purpose of this check is to confirm that the address exists and relates to a real property, and to establish that the individual permanently resides or previously resided at the address.

Verifying the address given by a prospective employee is important because it affirms that other information provided is correct. An individual may wish to omit their current or a former address to conceal adverse information, such as a poor credit rating or criminal convictions.

As a prospective employer, you must judge whether you need to ask for more than the individual's current address. For example, if the position is for a financial director, you may want a record of the individual's previous addresses.

How to confirm addresses

1. Ask the individual to provide documentation to prove residence at the address they have given. Providing documentation for previous addresses may be difficult if your check covers a long time period.
2. Carry out an electronic identity database search (see below). This will check previous addresses against databases such as the electoral register.

Gaps in residence details

If you require prospective employees to provide addresses that cover a lengthy period of time (e.g. five years or more), they may have gaps that they are not able to account for. There may be plausible explanations for this, such as foreign residence or travel. However, the individual may be attempting to conceal adverse information, such as a custodial prison sentence.

What to do to satisfy yourself about an individual's activities during gaps

1. Ask the individual to provide relevant documentation to cover the period in question.

2. Consider the time period. You may wish to draw up guidelines. For example, if the period is less than three months you may decide that it is neither necessary nor proportionate to confirm activities during that time.
3. If you are using a commercial sector screening business to verify identity, they may be able to carry out a gap analysis. Make sure you know what the capabilities are before accepting their tender (see the chapter *Commercial sector pre-employment screening services*).
4. Check that the individual's passport contains stamps for countries they claim to have visited in a residence gap. If the stamps are absent (increasingly passports are not stamped on entry to a country, especially in Europe) request other documentation to prove their stay in those countries.
5. If the individual was living abroad, ask them to provide confirmation of the address, such as documentation from a landlord or a bank statement. If they were working abroad, it is likely that you will also be verifying their employment. Are you able to match the employment dates with the address(es)?

If you are not able to obtain satisfactory explanations for gaps and/or inconsistencies in the addresses the individual provides, you may decide not to employ him or her.

The advantages of a paper-based approach

The paper-based approach is cheaper than the electronic approach. Also, it allows original documentation to be closely examined. If necessary, this can include the use of an ultra-violet (UV) light source and magnifying glass to increase the prospect of identifying any basic forgeries. See CPNI's [Good practice guide on pre-employment screening - Document Verification](#), which provides detailed guidance on this process.

The disadvantages of a paper-based approach

- Some documents can easily be forged or bought. The increased availability of electronic equipment and software means that it is easier for individuals to produce their own counterfeit documents. Utility bills are particularly easy to reproduce.
- It is relatively easy to falsely obtain documents which purport to be genuine, e.g. a driving licence. A false 'genuine' document can then 'breed' other 'genuine' documents.
- Often only experts will be able to identify sophisticated forgeries.
- Document verification can be time-consuming, particularly for less experienced staff.

The electronic approach to identity verification

Rather than relying on a physical assessment of documentation, the electronic approach seeks instead to verify identity by checking and cross referencing information from databases such as criminal records or credit reference agencies.

By searching for records associated with the name, date of birth and address(es) provided by an individual, it is possible to build a picture of that individual's past and current life. A long

history of varied transactions and events indicates that the identity is more likely to be genuine. A history that lacks detail and/or depth may indicate that the identity is false.

Corroborating information from a database check

Database checks alone are not able to confirm that the applicant is the rightful owner of that identity; they simply confirm that the identity exists. You must also test the individual's knowledge of the information you obtained from the electronic check to ascertain that the individual owns and is rightfully using the identity. If the individual is not able to corroborate a significant proportion of the information it may indicate that the individual does not own the identity.

Testing the individual's knowledge of the identity is as important as establishing that the identity exists. For example, a person who steals a wallet can appropriate the rightful owner's identity by using information in it e.g. from banking, gym membership or business cards. However, that person is unlikely to have detailed or an in-depth knowledge about former addresses, financial history or previous employers.

Searching electronic databases

You can use web-based systems (e.g. Experian Authenticate and BT URU) to carry out electronic database searches. This will usually require you to access the system via the internet, using a secure log-in.

The user will input the candidate's information into an electronic form. Typically, the system will score the search results on the basis of the type and amount of information the database corroborates. For example, corroboration of details about a store card – a type of information that a person could obtain through the theft of a wallet or purse, will score lower than details of a mortgage – a type of information that the rightful owner is more likely to have.

Aligning scores with your pre-employment screening policy

Thresholds can be set to ensure the system works in alignment with your screening policy. For example, you might decide on a score below which the recruitment process would be terminated. Above that, you might decide on a score range for which you would request further details from the applicant (including an explanation of the anomalies) before inputting the information again. You might also identify a 'high' score, above which you would proceed, without further checks, to the next stage of the pre-employment screening process.

Setting thresholds to measure confidence in the integrity of information is a key consideration if you are using electronic database searches to verify identity. You will need to agree the setting of thresholds with service providers during any tendering process.

'Checksum' analysis

In addition to an electronic identity search, some service providers can also carry out a 'checksum' analysis of a document. A checksum is a number derived by applying an algorithm to several items of information within an identity document. The nature of a checksum means it is impossible to alter any one item in the document - such as a

forename, last name, address, date of birth or so on - without the checksum revealing the alteration.

It is extremely difficult to create false checksums.

Calculating a valid checksum for information that has been altered is almost impossible and, therefore, difficult to falsify information in documents containing checksums. Several of the documents that you will require to verify identity will contain checksums.



Calculating checksums is a highly specialised area of knowledge that staff involved in pre-employment screening from within businesses are unlikely to have. If you wish to carry out a checksum analysis you will need to use a specialist provider.

The advantages of the electronic approach

- The electronic approach is based on testing biographical rather than attributed identity, assessing an individual's footprint in the UK. Creating a long-term and in-depth identity is a big challenge for fraudsters.
- Minimal training is required to use the software.
- Results are produced very quickly.

The disadvantages of the electronic approach

- The electronic approach loses its value if the prospective employee is not tested on the data produced by the search. The results simply demonstrate that the identity exists.
- Young candidates or those who have recently arrived in the UK are unlikely to have built up a footprint in the UK. For example, they may be ineligible to vote and so do not appear on the Electoral Roll; or they may not have a bank account, credit cards or a mortgage and so have not developed an in-depth credit history.
- The electronic approach does not provide an opportunity to make a face-to-face assessment of the candidate, unlike the paper-based approach.
- The data sources used may not be accurate and may produce 'false positives', for example Electoral Roll information may not be up to date and as a result the search will indicate that an individual does not live at a genuine address. In this situation, the candidate should be asked to provide alternative documentation to show residency.

The accuracy of data in the UK¹

It is important to note that the official UK databases which are used for identity verification are not always totally accurate.

Some key public sector databases are elective. The Electoral Register, Identity and Passport Service (IPS) and the Driver and Vehicle Licensing Authority (DVLA) are all dependent on

¹ 'Identity Fraud: A Study' (Cabinet Office, July 2002)

people applying for a service or registering their details and therefore do not cover the whole population, or contain up-to-date information.

Other databases hold records in excess of the expected population. This happens for a number of reasons:

- Some records are held on people who are deceased. This can be because there is a valid business reason – to facilitate payment of benefits based on inherited entitlements.
- Records are held on persons living abroad – for example, UK citizens who have left the country permanently or for lengthy periods; or foreign nationals who have lived and worked in the UK but since returned to their country of origin. This is an issue for all databases as there are no official records covering emigration.
- Human and system error can cause databases to hold duplicate records. Individuals may or may not notify changes of name, marriage etc. In all databases, even where no change of name has happened, duplicates are created by misspellings, data input errors, etc.
- Some duplicates will be raised as a result of deliberate fraud – where an individual invents a new identity in order to obtain benefits/services to which they are not entitled. For example, a disqualified driver may create a false identity and sit a further driving test in order to obtain a licence.

Issues to consider when procuring an electronic identity service

- What are the data sources? How accurate is it? How often are the data updated?
- Are there data protection issues concerning the databases and/or the applicant's data?
- When the applicant's data are entered into the system, will there be a footprint? For example, would someone be able to discover that the applicant is connected to your organisation? This may be relevant if you are considering employing high profile individuals in sensitive posts where discretion is important.
- Does the agency/business offer any additional services – such as checksum analysis?

A combined approach

Both the paper-based and electronic approaches have key strengths. CPNI recommends that you adopt a combined approach, at least for some posts. This will allow you to verify the applicant's original documentation and benefit from the comprehensiveness of the electronic approach.

Prevention of illegal migrant working: verification of nationality and immigration status

Immigration, Asylum and Nationality Act 2006

In 2008, the law on preventing illegal working in the UK changed. Sections 15-25 of the Immigration, Asylum and Nationality Act 2006 replaced Section 8 of the Asylum and Immigration Act 1996. Under the Act, employers may be liable for a civil penalty or criminal conviction for employing a person aged 16 or over who is subject to immigration control unless:

- that person has been authorised to be in the United Kingdom by the Government, and is permitted to take the job in question; or
- the person comes into a category where employment is allowed.

The Act introduced some changes to the way employers carry out right to work checks:

- An employer who is negligent or not sufficiently diligent at establishing a 'right to work' as part of their recruitment and employment practices may receive a civil penalty of up to £10,000 per illegal worker.
- An employer who is convicted of knowingly employing an illegal worker faces a maximum of two years imprisonment, and/or an unlimited fine.
- An employer has a continuing responsibility to monitor the ongoing entitlement to work of employees with time-limited leave to be in the UK.

Section 15 of the new Act created a civil penalty regime and may also provide employers with a **statutory excuse** ('an excuse') from payment of a civil penalty if they check and record certain documents belonging to prospective employees. These **checks must be made before an individual is employed** in order to obtain the statutory excuse. However, the excuse will not be available if the employer knowingly employs an illegal migrant worker. Employers can establish an excuse for each potential employee by checking and making a copy of certain original documents as specified in either List A (for those with an ongoing right to work) (pages 24) or List B (for those with time-limited right to work) (pages 25).

The legislation provides that employers have an ongoing responsibility to carry out checks on employees with time-limited immigration status (limited leave to enter or remain in the UK) if they wish to avoid a possible civil penalty. **These checks need to be carried out at least once per year** in order to retain the statutory excuse. Repeat checks do not need to be carried out for those employees with an ongoing right to work, if they have provided appropriate documents from List A.

For further advice contact the UKBA Employers' Helpline on 0300 123 4699 (also for other queries regarding the prevention of illegal migrant working).

Confirming right to work

In order to establish a statutory excuse, you should follow the steps below before a person begins working for you. In addition, you may wish to use the form at Appendix E that asks candidates to confirm their employment and immigration status.

Step one

Require prospective employees to provide:

- an original of one of the single documents, or two of the original documents in the specified combinations given, in List A; *or*
- an original of one of the single documents, or two of the original documents in the specified combinations given, in List B.

There is no need to ask for documents from both List A and List B.

Step two

Employers must also satisfy themselves that their prospective employee is the rightful holder of the documents they present. These documents should also demonstrate that the holder is entitled to do the type of work being offered.

Employers must carry out the following reasonable steps:

1. Check photographs, where available, to ensure that you are satisfied they are consistent with the appearance of the individual.
2. Check the dates of birth on all documentation, so that you are satisfied they are consistent, and correspond with the appearance of your potential employee.
3. Check that expiry dates on the documentation, and expiry dates of any limited leave to enter or remain in the UK have not passed.
4. Check any UK Government stamps or endorsements to ensure the individual is entitled to do the work being offered.
5. Satisfy yourself that the documents are genuine, have not been tampered with and belong to the holder.

If the individual gives you a document, or documents, from either List A or List B that are inconsistent, you should ask them for a further document to explain the reason for this. This could be a marriage or civil partnership certificate, divorce decree absolute, deed poll document or statutory declaration.

You also need to take reasonable steps to check that the documents are genuine. You are advised to refer to CPNI's [Good practice guide to pre-employment screening - document verification](#), which provides detailed guidance on all aspects of document verification.

Step three

Finally, employers must make and retain a copy of the relevant page or pages of the document, in a way that cannot be subsequently altered, e.g. a photocopy or scan (electronic copies must be made using Write Once Read Many (WORM) on a non-rewritable disk such as a CD-R). For a passport or travel document, employers must take a copy of:



1. the front cover of the document and all of the pages which give your prospective employee's personal details including nationality. In particular, you should copy any page which provides details of nationality, their photograph, date of birth, signature, date of expiry or biometric details; and
2. any page containing a United Kingdom Government stamp or endorsement that indicates that the employee has an entitlement to be in the UK and is permitted to do the type of work you are offering.

Where other documents have been provided, employers must take a copy of the whole document, in order to establish a statutory excuse.

You should keep a record of every document you have copied for the duration of the individual's employment, and for a further two years after the employment has ceased. By doing this, the UKBA will be able to examine your right to an excuse if they detect anyone working illegally for you.

It is important to remember that some of the documents you might copy will include personal information and that their information must remain confidential. Any copies of personal documents should be made only for the purpose of establishing an excuse under section 15 of the Act.

It should also be noted that UK Passports are subject to Crown copyright protection and copies of UK passports can only be made in certain circumstances, including for the purpose of establishing and recording an individual's right to work. This allows employers to keep the record of the document, but prohibits the passing of this information to third parties. Further information is available at www.nationalarchives.gov.uk/documents/information-management/reproduction-british-passport.pdf.

If you have carried out these checks and established that your job applicant is not permitted to work for you, then you are obliged to refuse employment. Failure to do so may result in a criminal conviction for knowingly employing an individual who does not have the right to work.

Complying with the Immigration, Asylum and Nationality Act 2006

You are advised to carry out document checks on all prospective employees. You can download a copy of the Government's code of practice for employers on how to comply with right to work legislation without discriminating unlawfully at:

www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventing-illegal-working/ .

Documents that employers must check in order to establish an excuse

We recommend that thorough document checks are conducted on all prospective employees, as this may establish a statutory excuse from a liability to pay the civil penalty, provide evidence of an open and transparent recruitment process and will ensure that your recruitment practices do not discriminate unlawfully.

List A – documents which provide an ongoing excuse

These will be presented by individuals who are not subject to immigration control and have no restrictions on their stay in the UK.

Single documents

A passport showing that the holder or a person named in the passport as the child of the holder, is a British citizen, or has a right of abode in the United Kingdom.

A passport or national identity card showing that the holder or a person named in the passport as the child of the holder, is a national of a European Economic Area (EEA) country or Switzerland.

A residence permit, registration certificate or document indicating or certifying permanent residence issued by the Home Office or UKBA to a national from an EEA country or Switzerland.

A passport or permanent residence card issued by the Home Office or UKBA which has an endorsement stating that the holder has a permanent right of residence in the United Kingdom as the family member of a national from an EEA country or Switzerland.

A passport or biometric immigration document, e.g., Biometric Residence Permit, endorsed to show that the holder is exempt from immigration control, can stay indefinitely in the United Kingdom, or has no time limit on their stay.

A passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.

Document combinations – List A

An official document giving the person's permanent National Insurance (NI) number and name. This could be a P45, P60, NI card, or a letter from a Government agency or previous employer.

Along with checking and copying a document giving the person's NI number, you must also check and copy one of the following documents:

An Immigration Status Document (ISD) issued by the Home Office or UKBA with an endorsement indicating that the holder is allowed to stay indefinitely in the UK or has no time limit on their stay.

A full birth or full adoption certificate issued in the UK which includes the name(s) of at least one of the holder's biological or adoptive parents.

A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland.

A certificate of registration or naturalisation as a British citizen.

A letter issued by the Home Office or UKBA which indicates that the holder can stay indefinitely in the UK.

List B – documents which provide an excuse for up to 12 months

These will be presented by individuals whose leave to enter or remain in the UK is time-limited, and will require repeat checks in order for the employer to retain their excuse.

Single documents

A passport or travel document endorsed to show that the holder can stay in the UK and is allowed to do the work you are offering, provided it does not require a work permit.

A biometric immigration document issued by the UKBA which indicates that the holder can stay in the UK and is allowed to do the work you are offering.

A residence card or document issued by the Home Office or UKBA to a family member of a national of the EEA or Switzerland.

Document combinations – List B

You will **not** have an excuse if, for example, you see one document from the first combination and one from the second or third combinations.

Combination 1

An official document giving the person's permanent NI number and name. This could be a P45, P60, National Insurance card, or a letter from a Government agency or previous employer.

Along with checking and copying a document giving the person's NI number, you must also check and copy one of the following two documents:

An ISD issued by the Home Office or UKBA with an endorsement indicating that the holder can stay in the UK and is allowed to do the work you are offering.

A letter issued by the Home Office or UKBA to the holder or the employer or prospective employer of the holder which indicates that the holder can stay in the UK and can take the work in question.

Combination 2

A work permit or other approval to take employment, issued by the Home Office or UKBA.

Along with a work permit, you should also check and copy one of the following two documents:

A passport or other travel document endorsed to show that the holder is able to stay in the United Kingdom and can take the work in question.

A letter issued by the Home Office or UKBA to the holder confirming that the person named in it is able to stay in the United Kingdom and can take the employment in question.

Combination 3

Evidence of verification of a right to work by the UKBA's Employer Checking Service².

Along with evidence of UKBA verification, you should also check and copy one of the following two documents:

A certificate of application issued by the Home Office or UKBA within the last 6 months to or for a family member of an EEA or Swiss national, stating that the holder is permitted to take employment.

An Application Registration Card (ARC) issued by the Home Office or UKBA stating that the holder is permitted to take employment.

The descriptions contained in List A or List B do not reflect the precise wording contained in the law. Full details are available in the UKBA's booklet *Comprehensive guidance for United Kingdom employers on preventing illegal working*, available from their website at:

www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventing-illegal-working/ .

² The UK Border Agency provides an Employer checking Service for verifying certain individuals' right to work in the UK. More information regarding this service is available at www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/support/ecs/.

Other guidance

Appendix F provides guidance on the rules which govern the employment of nationals from the EEA.

Appendix G provides additional Q&A on right to work generally.

Appendix H provides guidance on the Points Based System for employing migrant workers.

Qualification and employment checks

Independent confirmation of the applicant's qualifications and previous employment will help employers to build up a picture of the candidate's reliability and integrity. Furthermore, these checks can help identify those applicants attempting to hide negative information such as a prison sentence or dismissal from previous employment. This chapter provides guidance for employers who carry out their own pre-employment screening.

Qualification and employment checks carried out by a third party supplier are discussed in the chapter *Commercial sector pre-employment services*.



Why check qualifications and previous employment?

The purpose of a qualification check is to verify information provided by the candidate on their application form or Curriculum Vitae (CV) for educational or professional qualifications.

Employment checks involve verifying a prospective employee's employment history in terms of dates of employment and position. The individual's previous and current line managers may also agree to provide a more in-depth reference which focuses on their performance in post and overall skills (for example their ability to work with colleagues). Making use of the information contained in such a reference is not strictly considered to be part of the verification process as it does not authenticate factual information.

The procedures for verifying both qualifications and employment are similar.

Qualification checks

A qualification check should confirm:

1. the establishment attended
2. course dates
3. title of the course (if the applicant has included details of the courses studied it would be advisable to check them)
4. grade/mark awarded

For each post you should consider whether it is proportionate to confirm the candidate's qualifications.

You may wish to confirm professional qualifications and membership of any professional bodies regardless of the amount of time that has passed. For example, a doctor or accountant who qualified 20 years ago should not automatically be exempt from having their qualifications verified.

You should always request the original copies of any certificates and compare the information provided on them with what is listed on the application form. For example:

- Do the names match? The applicant may have been married, entered a civil partnership or divorced since gaining the qualification. Request an explanation from the candidate if in doubt.
- Does the date(s) on the certificate match the date(s) on the application form?
- Is there any difference in the title of the course or the grades?



A significant number of certificates will be printed on good quality paper which may be embossed, include an intricate crest with motto and a watermark. If you have any doubts about a certificate you should discuss your concerns with the education establishment in question.

If possible, you should contact the establishment directly to request confirmation of your prospective employee's attendance, course details and grade awarded. You may be required to provide a copy of the candidate's signed consent form and may also need to allow several weeks for a response, potentially longer if the establishment is overseas.

If resource constraints make this approach impossible then you should at least aim to:

- compare the details on the certificate with those on the application form (applicants attempting to use 'impostor' documents or forgeries of poor quality may not anticipate that certificates will be thoroughly checked);
- carry out an internet search on the establishment and compare the logo or crest, motto, contact details etc with the application form. If the establishment does not have a website or presence in some form on the internet, that in itself may be cause for concern.

If possible it is always advisable to verify the candidate's information direct with the establishment.

Degree and accreditation mills

Of increasing concern over recent years has been the growth of degree mills and accreditation mills. Degree mills, also known as diploma mills, are mostly online entities which offer substandard or bogus degrees in exchange for payment, with little or no work involved.

Accreditation mills are bogus accrediting agencies which are not recognised by the authorities responsible for governing education provision in their country of operation. They offer accreditation for a fee, and will carry out little or no investigation into the quality of education provided by the institutions they claim to accredit. Accreditation mills will often be located close to institutions they claim to accredit.³ Over 270 accreditation mills exist in the UK, second only to the USA in numbers.

³ Diploma and accreditation mills: exposing academic credential abuse (Verifile, January 2010)

Obtaining degrees through degree and accreditation mills devalues legitimate education by flooding the market with sub-standard degrees. Applicants who produce certificates from these mills as proof of evidence may in many cases be unqualified for the post they are applying for, and may obtain a pecuniary advantage for a post they are not entitled to hold. This may cause severe business and reputational damage to organisations should this information come to light. It is important that employers check the accreditation and authorisation to award degrees of the institution granting the qualification.

Third party screening companies may provide guidance on the existence of degree and accreditation mills. For example, Verifile (www.verifile.co.uk) operates a global database containing over 1,700 positively identified accreditation mills and over 1,500 suspected diploma mills.

National Recognition Centre for the United Kingdom (UK NARIC)

UK NARIC is the UK's national agency responsible for providing information and opinion on vocational, academic and professional qualifications from over 180 countries worldwide. UK NARIC assists overseas applicants to understand how their qualifications relate to those in the UK. It enables employers to process efficiently and effectively applications from individuals with international qualifications.

Further information can be found at www.naric.org.uk

Employment checks

As with qualification checks, the main aim of an employment check is to verify the information provided on the application form. The verification process focuses on confirming:

- dates of employment
- position(s) held
- duties
- salary
- reason for leaving
- any employment gaps

The candidate's current employer should not normally be contacted without prior permission from the candidate.

It is advisable to verify a minimum of **three years** of previous employment (five years is preferable). Ideally you should aim to check a period which covers at least two positions with separate employers. The more jobs you check the more likely you are to build up a comprehensive picture about your prospective employee.

Employer references

You may wish to consider obtaining personal references from the candidate's previous/current line managers. Personal references can provide a useful level of assurance about an individual's qualifications, integrity and track record. You should be aware that most

employers do not permit references to be provided by anyone who is not in the HR department.

There is an increasing reluctance on the part of employers to provide frank and timely comments on an individual's character, including whether they would be content to employ the individual again, because they are concerned about claims for defamation of character or breach of contract. As a result references may often add little extra, save that they confirm the dates of employment and position held.

Standardised reference form

You could consider devising a standard form for employer references. Standard templates can help to identify relevant information and minimise the effort involved to prompt a quick response. Appendix D has an example of a standard employment reference form. Some questions your form might include are:

- Over what period did the subject work for your company?
- What was their position?
- What did their duties involve?
- Are you related to the subject?
- Over what period have you known the subject?

Pre-prepared references

The candidate may provide pre-prepared references as part of the application process. You are advised to take reasonable steps to ensure that they are genuine; especially if they appear less than convincing (e.g. provided on poor quality paper or containing basic spelling or grammatical errors). Such checks might include:

- telephoning the author to confirm they provided the reference. As previously noted, the telephone number should be ascertained independently. A telephone number supplied by the prospective employee should not be relied upon;
- checking the existence of the employer (e.g. that it appears in relevant business directories).

Self-employment references

For periods of self-employment, evidence should be obtained (for example, from HMRC, bankers, accountants, solicitors or client references), to confirm that the individual's business was properly conducted and was terminated satisfactorily.

Other types of reference

Depending on the individual's circumstances, additional references may also be required.

- If an individual has been overseas for a single spell of three months or more, or a cumulative total of 6 months or more, every effort should be made to obtain a reference from the overseas employer.

- If an employer's reference is not available, a second personal reference should be obtained from a referee of some standing in the individual's community (for instance a doctor, lawyer or MP).
- If an individual has been in full time education, a reference should also be obtained from the relevant academic institution.
- If an individual has served in the Armed Forces or Civil Service during the previous three years, employer's references should be obtained from the relevant service or department.
- If no personal reference can be obtained then references should be obtained from personal acquaintances not related to or involved in any financial arrangement with the individual.

Your checks may return information which contradicts the details provided by the applicant and raises concerns. In this situation you should:

- proceed in a sensitive manner – there is often a reasonable explanation for apparent inconsistencies;
- attempt to address your concerns directly with the candidate (e.g. at an interview);
- when you have the facts, consider them within the context of all that applicant's screening results.

In exceptional circumstances, where your checks give you substantial concerns, then you may feel it would be appropriate to report your concerns to the police or other authorities.

Qualifications and employment checklist

Qualifications

1. Consider whether the post requires a qualifications check.
2. Always request original certificates and take copies.
3. Compare details on certificates etc with those provided by the applicant.
4. Independently confirm the existence of the establishment and confirm the details.

Employment

1. Check a minimum of three years (ideally five years) previous employment.
2. Independently confirm the employer's existence and contact details (including the line manager).
3. Confirm details with HR.
4. Where possible and desirable, request an employer's reference from the line manager.

Criminal record checks

For some, if not all posts, you may have identified criteria for deciding whether prior criminality precludes an applicant from taking up some, if not all, posts within your organisation (e.g. fraud convictions for financial posts, driving offences for positions where driving is involved). In these circumstances, you will wish to seek information on the applicant's criminal record. This chapter sets out the options available for checking the criminal records of prospective employees.

Requirements to disclose spent and unspent convictions

The Rehabilitation of Offenders Act (ROA) 1974 and the Rehabilitation of Offenders (Northern Ireland) Order 1978 establish that a criminal conviction becomes spent if an offender remains free of further convictions for a specified period. The length of the rehabilitation period depends on the sentence given, not the offence committed (see Appendix I for further details). The Act therefore provides the individual with protection from the unfair disclosure of criminal records data, for example to prospective employers, when there is deemed to have been a successful rehabilitation of the offence in question.



A conviction is described as unspent if the rehabilitation period associated with it has not yet lapsed.

Under the ROA a person is not normally required to disclose spent convictions when applying for a job (the ROA 1974 (Exceptions) Order 1975 and the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 discussed below, set out exceptions). Having spent convictions, or failing to disclose them, are not normally grounds for exclusion from employment. The following clauses from the ROA should be noted:

An applicant cannot be subjected to any liability or otherwise prejudiced for failing to acknowledge or disclose a spent conviction (ROA section 4(2) (b)).

Failure to disclose the details or existence of spent convictions is not a lawful ground for dismissing or excluding any person from employment (ROA section 4(3) (b)).

However, the ROA states that it is reasonable for employers to ask individuals for details of any unspent criminal convictions.

Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979

These Orders identify the types of position and employment that are exempt from the protection offered to individuals under the ROA 1974 and the Rehabilitation of Offenders (Northern Ireland) Order 1978, even where the conviction is spent. This means that the

employer or organisation is entitled to a full history of spent and unspent convictions as part of the pre-employment screening process. The types of position to which the exemptions apply can be divided into five broad categories:

- professions such as medical practitioners, barristers, accountants and other financial services positions, vets and opticians;
- those employed to uphold the law, for instance, judges, constables and prison officers;
- certain regulated occupations including, firearms dealers, directors of insurance companies, those in charge of certain types of nursing homes and taxi drivers;
- those whose work is concerned with the provision of care services to vulnerable adults and/or the provision of health services, and those who work with children;
- those whose work could put national security at risk such as air traffic controllers and certain employees of the Crown.

Please note that this is not a full list as the Exceptions Order is refined by a number of additional amendments and regulations. The full list of occupations eligible for Criminal Records Bureau (CRB) checks is available at www.homeoffice.gov.uk/publications/agencies-public-bodies/CRB/about-the-crb or by contacting the CRB enquiries line on 0870 9090 811. Alternatively, a copy of the *Exceptions Order and associated Regulations* can be obtained from the Stationery Office at www.tsoshop.co.uk.

Sources of criminal history information

Organisations may become a registered body with three organisations that can provide criminal convictions information about prospective employees – Disclosure Scotland, Access Northern Ireland (AccessNI) and the CRB. Additionally, employers may contract with an umbrella body in order to access the Disclosure Service. Information about umbrella bodies and becoming a registered body is included at the end of this chapter.

Disclosure Scotland and AccessNI

Disclosure Scotland is part of the Scottish Criminal Record Office which is in turn an Executive Agency of the Scottish Executive. AccessNI was established by a joint programme between the Northern Ireland Office, the Department of Health, Social Services and Public Safety, the Department of Education and the Police Service of Northern Ireland. Both organisations provide employers, public bodies and organisations within the voluntary sector with criminal history information on individuals applying for posts. Both Disclosure Scotland and Access NI provide the following three services which are set out in further detail throughout this chapter:

- Basic disclosure
- Standard disclosure
- Enhanced disclosure

Criminal Records Bureau (CRB)

The CRB is an executive agency of the Home Office and is a 'one-stop-shop' for organisations accessing the criminal records disclosure service. As part of this process, the CRB access the data held on the Police National Computer, information contained in the lists of excluded persons held by the Department of Health and the Department for Education.

There are two levels of CRB check currently available:

- Standard disclosure
- Enhanced disclosure – which includes access to local police intelligence

All three organisations have access to the same type of information. Ordinarily, registered bodies will utilise the service appropriate to their geographical boundaries. However, in cases where a check is being carried out through CRB and the applicant has resided in Scotland in the past five years, CRB will contact Disclosure Scotland who in turn will contact the Scottish police forces if anything has been found on Scottish records. Similar arrangements exist in Northern Ireland. The Agencies will regularly share appropriate information from their data sources to ensure that a comprehensive disclosure is issued where an applicant has lived in all jurisdictions.

On 31 March 2011, information on the CRB was transferred to the following websites:

- www.direct.gov.uk/en/Employment/Startinganewjob
information for applicants seeking a CRB check
- www.homeoffice.gov.uk/agencies-public-bodies/crb
CRB information and publications for particular interest groups
- www.businesslink.gov.uk/bdotg/action/layer?topicId=1084415157
information for registered bodies and other organisations using the CRB service

Cost of disclosures

The cost of obtaining criminal records depends on the level of the Disclosure. Employers should tell prospective employees who will pay or be expected to pay for the Disclosure. They may well pay the fee outright or claim it back after the individual has started work with them. Further details can be obtained from:

www.direct.gov.uk/en/Employment/Startinganewjob/DG_195811 (for CRB checks),
www.disclosurescotland.co.uk , and www.dojni.gov.uk/accessni .

Option one: a criminal record declaration

You may wish to request that applicants complete a criminal record declaration form (an example of which can be found at Appendix J). The declaration, which the applicant has to sign, asks the applicant to provide information about any unspent criminal convictions. It relies on the honesty of the individual to provide complete and accurate information. If he or she decides to provide a false declaration there is no way of knowing unless their response is independently checked with Disclosure Scotland and AccessNI through their Basic

disclosure service. For reasons of transparency, the criminal record declaration form should make clear if such a check may be carried out. This in itself should encourage honesty.

If you wish to ask candidates about their criminal conviction history but want to avoid the cost and/or time taken to request a Basic disclosure, then a criminal record declaration may be the most appropriate course of action.

Using the correct terminology in the criminal record declaration

To ensure that you receive the appropriate response from the candidate's criminal record declaration, it is important that you word the form appropriately. Cautions (which can be given for offences such as theft and assault), reprimands and final warnings are not criminal convictions and therefore are not covered by the ROA. So, if individuals with only cautions, reprimands or final warnings are asked if they have any criminal convictions or a criminal record (a less precise term but usually understood to mean convictions) they can answer in the negative. However, if employers specifically ask if candidates have cautions, reprimands or final warnings, these should be disclosed until they are deleted from police records (usually after five years if there are no convictions on the record).



Assessing applicants who declare unspent convictions

Your criteria should allow for the fact that a conviction — spent or unspent — is not necessarily a bar to employment. Equally, they should indicate, as far as possible, the types of unspent convictions that are likely to be unacceptable for a given post (there is likely to be significant variation between posts). They are likely to indicate that, for all posts, employers should consider the situation carefully before offering permanent appointments to individuals who are:

- on probation (in a legal sense)
- under a suspended prison sentence
- released from prison on parole
- still under a conditional discharge
- subject to a Control Order (likely to be replaced with Terrorism Prevention and Investigation Measures by the end of 2011)

In many cases, your criteria will indicate whether a declared unspent conviction is acceptable or not. In more complex cases you will need to make a judgment. In doing this you should consider:

- whether the offence would cast doubt on the individual's integrity or your business's reputation;
- whether the offence would affect an individual's ability to do the job;
- whether the conviction is relevant to the particular post (for instance, fraud might be a problem in relation to a finance post but not in other posts; convictions for protest/extremist acts such as those connected with animal rights may be more of a problem for one organisation than another);
- the length of time since the offence occurred;
- the age of the candidate at the time;

- the nature and background of the offence (such as violent crime or a history of violence which may impact on an organisation's duty of care to its staff);
- the seriousness of the offence;
- whether there is a pattern of offences;
- the conduct and character of the individual since the offence;
- the explanation offered by the individual.

Option two: the Basic disclosure certificate

You can also request that the prospective employee applies for a Basic disclosure certificate. This is the lowest publicly available level of disclosure and is only issued to individuals on payment of the appropriate fee. It contains details of convictions considered unspent under the ROA - or states that there are no such convictions, at the time the application is made.

The Basic disclosure certificate can be applied for online at www.disclosurescotland.co.uk or www.dojni.gov.uk/accessni. It is the responsibility of the candidate to forward the certificate to the prospective employer. If a candidate is already in possession of their Basic disclosure certificate, you should check the date it was issued before agreeing to accept it as the situation may have changed since it was issued. It will normally be the applicant who pays for the certificate. Employers should ensure that prospective employees understand the process and state clearly whether or not the candidate will be reimbursed for their Basic disclosure certificate.

A Basic Disclosure obtained through Disclosure Scotland and AccessNI will contain details of any unspent convictions held on the Scottish Criminal History System and/or the Police National Computer (PNC). The potential for the development of a Basic Disclosure Service within England and Wales has not at this time been finalised.

The two other checks are available for employers to use in cases where they are entitled to ask about criminal records under the ROA Exceptions Order are the Standard and Enhanced disclosures.

Option three: Standard disclosure

The intermediate level of disclosure is the Standard disclosure. This includes convictions held on criminal records and covers both spent and unspent convictions. The main categories of occupations which are covered in the Standard disclosure include:

- those involving regular contact with children and adults at risk
- those involved in the administration of the law
- those applying for firearms; explosives and gaming licences
- professional groups in health, pharmacy and law
- senior managers in banking and financial services

This list is not exhaustive.

Option four: Enhanced disclosure

This is the highest level of disclosure and in addition to the details included in the Standard disclosure, the Enhanced disclosure may contain non-conviction information which a Chief Officer or Chief Constable may choose to disclose if they believe it to be relevant to the position in question. This type of disclosure is available to:

- those who apply for work that regularly involves caring for, training, supervising or being in sole charge of children at risk;
- applicants for various gaming and lottery licences;
- those seeking judicial appointment;
- applicants for registration to act as child minders, day carers, foster parents or carers.

Again this list is not exhaustive.

The applicant receives his or her own copy for all types of disclosure. The registered body also receives a copy of Standard and Enhanced disclosures. Disclosures cannot be obtained by members of the public although individuals may make Subject Access Requests (SAR) for their own purposes to the CRB and/or local police force under the Data Protection Act 1998.

Where employers are entitled to request criminal records disclosure, it is common to make such a request when a provisional offer of employment or a volunteer post is made. It is important to ensure that both the offer and contract of employment are conditional on appropriate criminal records disclosure and subsequently, there being no adverse entries disclosed. It is also important to note that criminal records disclosure carries no formal period of validity and the older a check the less reliable the information is, as the information it contains may not be up to date. It would be advisable to include the right for the employer to repeat the process at regular intervals during employment, noting the date of the issue (on the individual's copy) as a guide as to when to request a new criminal record check.

Registered bodies

A registered body is an organisation registered with one of the criminal record disclosure organisations for the purpose of submitting disclosure applications for relevant positions or employment. The registered body must identify the required category of disclosure relevant to the position or employment in question. There are separate arrangements to become a registered body for CRB, Disclosure Scotland and AccessNI.

The following details outline CRB's guidance on registered bodies:

The registered body's role is to:

- check and validate the information provided by the applicant on the application form;
- establish the true identity of the applicant via identity authentication;
- ensure the application form is fully completed and the information it contains is accurate;

- countersign applications to confirm that the organisation has an entitlement to access criminal record information.

Before applying to register with CRB, organisations must first consider whether they are:

Entitled to ask prospective employees about their spent convictions, for example, are they applying for a position which is covered by the Exceptions Order of the ROA (see the relevant section at the start of this chapter).

Able to comply with CRB's Code of Practice

(www.businesslink.gov.uk/bdotg/action/detail?itemId=1084427588&type=RESOURCES).

Able to meet the threshold requirements and submit a minimum of 100 applications per year. If not, they should go through an umbrella body.

Umbrella bodies

An umbrella body is a registered body which provides access to disclosure services for other organisations. For example, a large organisation that has registered with CRB to screen its own staff and/or volunteers may decide to offer access to CRB checks to smaller organisations. Umbrella bodies have the same responsibilities as registered bodies. They must take reasonable steps to ensure that any organisation whose applications they countersign complies with the relevant responsibilities and obligations as determined by CRB's Code of Practice.

Umbrella bodies are entitled to charge an administration fee for the services they provide as detailed on the websites of CRB, Disclosure Scotland and AccessNI.

Disclosures checklist

Criminal Record Declaration - completed by the applicant, listing unspent convictions.

Basic disclosure – provided by Disclosure Scotland and AccessNI, not job-specific or job-related and only provided to the individual. Relates specifically to information contained on the Scottish and Northern Ireland Criminal History Systems.

Standard disclosure – covers unspent and spent convictions for employment or positions such as regular contact with children and adults at risk.

Enhanced disclosure – may also contain non-conviction information from a Chief Constable of a relevant local police force.

Registered bodies – entitled to request Standard and Enhanced disclosures. Registered bodies must be able to meet the threshold requirements and submit a minimum of 100 applications per year.

Umbrella bodies – a registered body which offers access to criminal history checks to smaller organisations.

Financial checks

For some posts you may feel that financial checks are justifiable. Interpreting the security implications of financial information is not straightforward and is not seen as a core aspect of pre-employment screening. It will be dealt with more fully in National Security Vetting and other specialised screening assessment methods. Consequently, this chapter aims only to provide a brief overview of financial enquiries.

Types of check

Financial checks can provide details on many aspects of a person's financial background:

- credit information listed at the applicant's current and previous addresses, including County Court Judgments (CCJs), Voluntary Agreements or bankruptcies;
- a credit history report from a credit reference agency;
- UK Directors search: to ascertain whether the applicant holds any current or previous directorships or any disqualified directorships;
- searches against the Financial Service Authority's (FSA) Individual Register and Prohibited Persons Register.

How you can conduct financial checks

For sensitive positions, and particularly those that involve handling money, you may wish to include relevant questions on the application form, for example, *Have you ever been the subject of a County Court Judgment (CCJ)?*

Financial enquiries can be conducted in a number of ways including:

- A number of companies can search an individual's details across financial service/credit databases. Therefore, combined with verifying identity, employers are able to discover relevant financial data. (See chapter on *Identity*.)
- Credit reference agencies can provide individual credit reports.
- Financial reports, either as a stand alone report or combined with other services (e.g. identity check, employment and qualifications searches etc), offered by commercial pre-employment screening businesses.

Financial enquiries – checklist

- Unlikely to be required for every post; most likely for posts handling money/funds etc.
- Interpreting financial data is likely to require a greater degree of judgement than the other pre-employment checks referred to. Consideration to be given to the ability and concerted efforts made to repay debts. Explicit guidelines will help to ensure that these judgments are consistent and defensible.

Overseas checks

Employers are increasingly faced with the challenges of undertaking pre-employment checks on overseas applicants and those who have lived and worked outside the UK. It is important to verify their credentials because they may:



- exaggerate employment overseas in the belief that the details will not be checked; or
- wish to conceal adverse information (e.g. about a criminal record).

UK candidates should also give a reasonable account of any significant periods - three months or more - spent abroad.

This chapter highlights some of the issues with conducting checks in other countries and outlines a number of options available for screening overseas.

Challenges of overseas checks

The chapter *Pre-employment screening policy* describes the importance of ensuring pre-employment screening processes are an integral part of your recruitment policies. However, some additional factors need to be considered regarding the acquisition of information from overseas.

Obtaining and verifying information from abroad about a prospective employee's qualifications and employment history is likely to add time to the process and potentially lead to some employers adopting a 'best you can approach' when checking overseas candidates.

Furthermore, operating conditions and legal constraints abroad can potentially impede the screening process and in some cases mean the necessary information or assurance is ultimately not available. In these circumstances employers will need to decide the level of risk they are willing to accept.

Managing the risk

There will be occasions when the business need will dictate that employees are taken on as soon as is practicably possible. In such instances an initial identity and right to work check, perhaps carried out by a commercial screening provider, might be considered with temporary and managed access to the site allowed. In the meantime, more thorough pre-employment screening checks can be carried out in the country in which the applicant has been most recently living. Full employment would be conditional on satisfactory completion of the full and required range of checks.

However, it should also be recognised that it might not be possible to employ the individual where the required checks cannot be carried out or sufficient assurance cannot be gained by other means. This should not reflect on the honesty or integrity of the individual, more that the required background checks in the country of residence prior to arriving in the UK were simply not possible. Alternatively you might decide to take on the prospective candidate,

applying a programme of ongoing personnel security management that reflects the level of risk entailed in allowing access without the required information or assurance being available.

Conducting your own overseas checks

You may wish to consider conducting your own overseas pre-employment checks. A good starting point would be the relevant country's UK embassy or high commission which may be in a position to explain how certain processes work (e.g. criminal record checks) and provide relevant contacts. A supplement to this guidance, *Disclosure of criminal records in overseas jurisdictions* (March 2009), provides more detailed advice in acquiring criminal history information for a range of countries, and can be found on CPNI's website (www.cpni.gov.uk/advice/Personnel-security1/Overseas-criminal-record-checks).

You may want to confirm a prospective employee's identity (i.e. their 'biographical footprint') in another country. The relevant embassy or consulate may be able to help you identify an electronic identity service in that country. Alternatively, you may wish to conduct an internet search or contact a UK commercial service which can provide a similar package overseas (for further details see the chapter *Commercial sector pre-employment screening services*).

The chapter *Qualifications and employment checks* offers general guidance on verifying a prospective employee's qualifications and previous employment. You can follow the same guidance when conducting checks overseas. You should always ensure that you independently confirm the contact details of a candidate's previous employer and line manager (i.e. do not rely on the information provided by the applicant on the form). The internet can also be a valuable research tool as the majority of companies and organisations now have websites.

Employers should consider allocating additional time when acquiring screening information from overseas, including breaks and semesters in the academic year which may delay confirmation of attendance and qualifications. Allowing time for translation is also a consideration, including work permits and references.

Hiring an external screening service

Some employers may wish to consider outsourcing their overseas checks to an external pre-employment screening company. More guidance on the use of commercial screening businesses is provided in the chapter *Commercial sector pre-employment screening services*. These companies are likely to offer some of the following advantages:

- foreign language capacity
- knowledge of the country
- ability to conduct business during unsocial working hours (e.g. with the Far East)
- offices or links with screening companies in specific countries
- knowledge of country specific legislation
- a good understanding of how long the screening process takes

- a good understanding of the reliability of country specific information (e.g. government records)



Some companies, as part of their service, provide a country-by-country matrix of the checks possible, offering an overall risk score where detail is lacking or where it has not been possible to carry out checks. When it has not been possible to obtain criminal record history some companies, at an extra cost, will offer an additional service that applies checks against sanctions lists (e.g. the Jersey and Guernsey Financial Services Commissions, law enforcement lists such as 'FBI Most Wanted' and regulatory enforcement bodies such as the FSA).

Many companies offer search packages that interrogate media sources and newsfeeds for matching identity information. Some include due diligence checks as part of the package, whilst others specialise in screening checks from a particular region or part of the globe.

As already stated, companies might wish to have the right to audit the services of the screening provider included as part of the contract.

Using an external service to conduct overseas checks – considerations

- Ensure that you understand how they intend to conduct the checks. For example, if they lack offices in the appropriate countries how will they work? Via an indigenous screening partner? If so, who is their proposed partner?
- How will prospective employees' information be stored and protected?
- How long will their information be held?
- How long will it take to obtain the screening results?

Overseas criminal records history

Employers may want to confirm whether a prospective employee has a history of criminal convictions in another country. The additional time to acquire overseas criminal records checks must be factored into recruitment procedures, so it is especially important to highlight this requirement early in the process to prevent unnecessary delays. CPNI's *Disclosure of criminal records in overseas jurisdictions* will help determine the timescales necessary for many countries. For instances where a country is not listed in this guidance, you should visit:

www.businesslink.gov.uk/bdotg/action/detail?itemId=1087477219&type=RESOURCES ; or www.sia.homeoffice.gov.uk/Pages/licensing-overseas-checks.aspx

If the country that you are looking for is still not listed you may wish to contact the country's representative in the United Kingdom. Contact details for those countries which have a representative in the United Kingdom can be found on the Foreign and Commonwealth Office (FCO) website www.fco.gov.uk/en/travel-and-living-abroad/foreign-embassy-in-the-uk

It is important to set clear criteria regarding the requirement for overseas criminal checks on prospective employees. For instance you may wish to specify the amount of time an

individual could have spent outside the UK before overseas criminal history information would be necessary. As an example, the Security Industry Authority (SIA) only requires applicants for security licences to provide overseas criminal history if they have spent a period of six continuous months or more abroad over the past five years.

The quality of criminal records information provided will differ from country to country. When considering overseas criminal records checks it is important to realise that not all countries operate in the same manner, and as such employers will want to consider:

- whether records are held at a national level or at a regional/local level;
- the quality of record-keeping. This may vary by country, with incomplete, inaccurate and out of date information a possibility;
- whether records are held manually and not electronically;
- the move in many countries towards electronic records and centralised databases.

Overseas criminal record certificates/checks can take a wide variety of forms. In some countries, disclosure is presented as a certificate of good conduct or no criminal conduct. Issuing authorities may not stipulate reasons for not granting a certificate where the individual has a criminal record. In other countries, a criminal records disclosure will indicate the existence of criminal convictions in accordance with local rehabilitation laws and regulations. Employers should be minded that the categories of criminal conviction differ from country to country and that the laws governing rehabilitation of offenders also vary significantly. In some instances criminal records are expunged either automatically after a period of time or after a time linked to the length of the original sentence.

The accuracy and authenticity of criminal records information can depend on how '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. This normally involves providing identity, completing forms, paying a fee, and sometimes providing fingerprints too. The results are passed back to the embassy or high commission and then to the applicant. This ensures a safe route which is difficult to tamper with and is often further verified by the UK-based embassy or high commission stamp.

In cases where prospective employees have to apply to the issuing authority direct, 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 the embassy may also be able to authenticate the search results. It is also possible to acquire information through a third party or nominated person.

Obtaining criminal certificates overseas checklist

1. Type of 'certificate' – is it a criminal record check or a certificate of good behaviour?
2. How it was obtained – has it come from the applicant, a third party, the embassy or issuing authority?
3. Does the certificate require translating? If so, is it the employer's or applicant's responsibility to provide this? Has the translation been verified?

UK candidates with time spent overseas

It is possible that the prospective candidate is a UK national who has spent time overseas. You could request documentation from them accounting for this time spent abroad. However this should not, in itself, be treated as a prerequisite for employment. Examples include:

- suitable proof of residence for time spent abroad, i.e. document from landlord;
- overseas employee or academic references/certificates;
- bank/credit card statements;
- proof of itinerary;
- character references (e.g. from fellow UK travellers/students), which should be clearly written and quoting dates and places of meeting;
- references from UK departments and agencies based overseas (e.g. FCO missions, British Council, Non-Government Organisations and agencies).

Prospective employees should be informed that, if they provide any of the references above, they are likely to be independently verified. Confirmation of dates can be cross-referenced with passports, work permits and by contacting appropriate embassies and consulates. It is always advisable to confirm the details provided; the internet can be a valuable research tool in doing this. Keeping examples of official documents acquired such as academic qualifications or criminal record certificates is good practice. This will help in instances where it is necessary to challenge irregularities during interviews.

Contractors

There is a perception that, considering the high staff turnover and financial overheads, smaller, cost-conscious employers who employ large numbers of overseas staff are less likely to benefit from carrying out exhaustive screening. However, companies should consider exercising their right to audit the contractor, writing this into the contract to ensure that the required level of overseas screening is being maintained. If a contractor argues it is not practicable to apply the required levels of screening to staff recruited from overseas, then the employer should consider how to manage the risk of having such personnel on site, (e.g. additional supervision or restricted access). Further details on applying robust ongoing management can be found in CPNI's *Ongoing personnel security*. www.cpni.gov.uk/advice/Personnel-security1/Ongoing-measures .

Media searches

It is becoming increasingly common for employers to consider an applicant's 'online reputation', i.e. the evaluation of an individual based on their online behaviour and what they and others post about them. CPNI's *Media Screening: use of the internet in employment decisions* provides comprehensive advice to employers on using the internet to inform their employment decisions. This chapter provides a brief overview of media searches explored in the Good practice guide, and their relevance to pre-employment screening.



What applicants do or say on the internet may incur reputational or security risks to the employer. They may reveal or conversely conceal information about themselves. Media searches may therefore be required if the applicant will have access to sensitive material or sites within the organisation, or depending on their duties and responsibilities. Media searches can help verify identity, confirm or resolve concerns about suspicious behaviour, or establish how security aware the applicant is (for example, the information disclosed in a individual's profile on a social networking site, or the permissions granted for other users of the social network site to view the profile). Potential conflicts of interest may also be identified.

Media searches must be necessary, proportionate and transparent. If the employer has no justifiable reason for conducting media searches, then they should not be done. Searches must also be compliant with the DPA, Human Rights Act and relevant employment law. Only online information which can be publicly accessed should be researched. If results are recorded, they must be stored securely and retained for as long as there is a legitimate business requirement.

There are risks inherent with media searches. Employers must ensure that information obtained relates to the applicant, and not someone of the same name. Employers also need to consider whether the applicant may be attempting to build themselves up through their actions or comments online. Employers should also be mindful of third party views or opinions. Information on the applicant may be unreliable, with little or no prospect of verifying the information.

Prospective employees should be informed that all sources of information available to the organisation may be reviewed to assess their suitability for employment. Employers should include in their pre-employment policies thresholds for what online material or internet usage is deemed to be adverse, and what the impact of adverse information would be on the organisation and its existing employees

Employers should decide whether they carry out media searches or use the services of a third party screening company. Employers should consider what their requirements are, and the value of such searches. Employers should refrain from reaching a decision on whether to employ based solely on the results of media searches. These should be added to all the other information at the employer's disposal before a decision is reached.

Commercial sector pre-employment screening services

This chapter highlights the key issues to be taken into account by employers when considering the use of an external pre-employment screening company.

What do pre-employment screening companies offer?

There has been a steady growth in the use of pre-employment screening businesses. These range from small local companies to global high profile brands. Some companies focus on only providing pre-employment checks (e.g. verification of identity, employment and qualifications checks) while other businesses provide more specialised services, such as drug and alcohol testing and sensitive and covert investigations. Larger screening companies can act as umbrella organisations for criminal record checks.

A commercial sector pre-employment screening company may be able to offer a number of advantages. These include:

Reduced administrative costs – training your own staff to conduct a robust screening process can be costly.

Fast results – identity verification checks can provide results direct to the customer in seconds.

High degree of flexibility – it should be able to provide a service to suit your specific needs, from one service (e.g. verification of identity) to the whole pre-employment screening process.

Global reach – it may be able to offer multi-cultural and multilingual skills used to conduct checks overseas. This approach can also allow companies to perform checks in any time-zone, no matter what time it is in the UK.

Cutting edge technologies – increasing competition in the screening field and research and development by commercial companies can help to keep them at the forefront of any advances in pre-employment screening techniques (for example online services - see below).

Compliance – it can often provide a screening service which is compliant and compatible with industry standards (e.g. BS7858), SIA licensing or financial regulations.

Online screening services

Screening businesses are increasingly (although not exclusively) using online automated software packages to perform and manage the screening process. Both the prospective employee and the employer may be able to log-on to a web-based service. This easily allows more information to be provided if required and an opportunity for the applicant to give consent should the employer request new checks. Online packages can also store an individual's details and references and compare the two sets of data. Systems can identify when references are missing and automatically produce a chaser letter or e-mail.

Employers can check the status and progress of screening, which can help them to determine the employee's likely start date. Furthermore, online services can reduce the need for paperwork by storing electronically scanned documents (e.g. passports) and references.

Advocates of the online service suggest that it is a faster, more accurate, more cost effective and more user-friendly way to manage the screening process.

What you should consider about pre-employment screening companies

- The final decision on recruitment rests with the employer, regardless of the involvement of the third party screening company.
- Can a company really live up to its promotional material? You should consider asking to speak to some of their existing clients to get a better idea of the service being offered.
- What information can the company access?
- Do they offer any expertise and experience in the assessment of inconsistent or inaccurate screening results? Do they offer any gap analysis?
- A competitive market increases the pressure on screening companies to produce results quickly. How can they ensure that a high quality standard of screening will always be met and maintained?
- How is an individual's data stored and protected?
- Do you have the right to audit (in detail) how and what they screen?
- What level of screening do their staffs undergo?

Commercial screening services – checklist

1. Pre-employment screening businesses can provide a flexible high quality service to meet your needs.
2. An external service may be cheaper and more efficient than in-house employment screening.
3. The standard and quality of pre-employment screening businesses is likely to vary – ensure that you know a great deal about the company and service being offered before you make your choice. Ask to speak to their existing clients.
4. Do you have any specific needs – i.e. overseas checks? How do they plan to meet them?
5. Have they done their research about your company?

Secure contracting

A contractor is defined as an individual who is not an employee of an organisation, but who has a direct or indirect contractual relationship to provide services to the end user (i.e. the hiring company, or 'contracting authority'). A contractor may be an individual worker engaged by the contracting authority directly under a contract for services or an individual worker engaged to work for the contracting authority through a contracting company or agency. In larger projects, a contracting authority may engage a third party company to complete a project or supply services. This company will supply their own staff and may in turn recruit further levels or subcontractor or workers.

Contractors can provide vital skills and expertise that cannot be developed internally for the same cost within the same timescales. However, contractors should undergo the same level of pre-employment screening as those permanent employees with equivalent levels of access. This chapter provides recommendations on how to meet these challenges.

Risk assessment

Contractors should be risk assessed according to the same process as permanent staff. The risk assessment should ensure that the level of pre-employment screening carried out for the contractor(s) reflects the level of access/responsibility associated with the role and that of a permanent employee undertaking a similar role.

Accountability

It is important to ensure that someone within the organisation is accountable for the pre-employment screening of contractors. It may be helpful for this to be the same person who is responsible for the pre-employment screening of permanent staff.

Embedding pre-employment screening in contracts

Contracts should outline the checks required for each post and detail how these are to be performed. There are three ways in which the checks can be conducted:

1: Contracting authority performs pre-employment screening checks on all contractors

Write into all contracts that contractors will be subject to pre-employment screening and that their ability to work on the contract will be subject to the successful completion of the checks. This option may be resource intensive (both in terms of money and time). However, it allows employers to retain control of the screening process and to ensure that the appropriate standards are met and retained.

2: Contracting company/agency performs pre-employment screening

There should be a requirement that all contracting companies must pre-screen those who will work on the contract. The contracting company/agency should be able to demonstrate that the checks have been carried out satisfactorily, and the contracting authority should reserve the right to audit their processes. This requirement should cascade from contract to sub-contract.

3: *Third party pre-employment screening*

Write into all contracts a requirement that contractors will be subjected to pre-employment screening checks by a third party organisation. The pre-employment screening company should be able to demonstrate that the checks have been carried out satisfactorily, and the contracting authority should reserve the right to audit their processes.

Some contracting authorities are stipulating the use of a preferred pre-employment screening company across all their contracts. This reduces the administrative and financial burdens of pre-employment screening.

Dealing with adverse pre-employment screening information

The contracting authority should put in place a process with the contracting company/agency for dealing with adverse pre-employment screening information, stating where possible the thresholds for refusal of an individual to work for the organisation as part of the contract. This should also consider the disclosure of criminal convictions where appropriate. Processes should be in place for the contractor company/agency to refer the decision making process back to the contracting authority ahead of any decision to proceed to engage the individual. This is especially important in border-line cases.

Confirming the identity of contractors

Systems should be in place to confirm that the person who arrives for work is the person the contracting company/agency supplied and screened to work for the contracting authority. The contracting authority and company/agency can exchange photographs and names to enable verification at the initial entry to the contracting authority. Industry-recognised arrangements such as the Construction Skills Certification Scheme or the Energy Utilities Skills Register Card may also be used as an additional verification check as part of this process, but not as a replacement for pre-employment screening.

Managing the risk through supervised access

If it is not possible to screen contractors to the same standard as permanent staff, contracting authorities should escort them whilst on site or implement additional physical measures including zoned/controlled access and distinguishable security passes.

Re-engaging contractors

When a contractor is engaged on more than one occasion in the same organisation, it should not be assumed that their circumstances have remained unchanged between periods of engagement. At the beginning of each period of re-engagement, the contracting authority should ensure that the contractor poses no greater risk than previously. Depending on the time elapsed, this could range from a short series of questions confirming that the contractor's circumstances give no greater cause for concern than during the initial period of engagement, to a repeat of the entire pre-employment screening process. This requirement should be stipulated in the contract.

Contracts

A contract with the contracting company/agency is likely to include:

- details of the checks required for different posts;
- a statement to the effect that the company/agency will not receive payment for their services unless it provides staff who have been adequately screened;
- the company/agency will be liable for financial penalties if it is discovered that contracting staff have not been adequately screened;
- a statement that the contracting authority retains the right to audit the screening process at any time;
- the company/agency must inform the contracting authority when a contractor has been dismissed;
- the company/agency must inform the contracting authority when a contractor is no longer employed by them, is undergoing any disciplinary procedures, or is arrested etc;



Contracts with third parties are likely to include some of the provisions previously noted. In addition the following considerations may be relevant.

- The same pre-employment screening requirements should be cascaded to sub-contractors.
- The contract should specify where the work should be carried out and who should have access to that material (i.e. named individuals).
- A general policy on protective security, including:
 - procedures to protect organisational assets;
 - procedures to determine whether any compromise of the assets, e.g. loss or modification of data, has occurred;
 - controls to ensure the return or destruction of information and assets at the end of, or at an agreed point in time during, the contract;
 - restrictions on copying and disclosing information.
- Access control agreements, covering:
 - permitted access methods, and the control and use of unique identifiers such as user IDs and passwords;
 - an authorisation process for user access and privileges;
 - a requirement to maintain a list of individuals authorised to use the services being made available, and what their rights and privileges are with respect to such use.
- The right to monitor, and revoke, user activity.

- Physical protection controls and mechanisms required to ensure those controls are followed.
- Arrangements for the reporting, notification and investigation of security incidents and security breaches.

It is advisable that all contracts contain:

- a confidentiality agreement
- appropriate personal or business insurance

Audit

Where a contracting company or third party is performing pre-employment screening checks it is important that you quality assure this process through audits. When conducting an audit the contracting authority should ensure that:

- the right to audit is specified in the contract, and to perform an audit with reasonable notice;
- the contracting company or third party has a named individual within their organisation responsible for their pre-employment screening policy;
- the policy is consistent with your requirements;
- the contracting company's or third party's screening processes conform to the standards set out in the contract;
- the audit process is independent and transparent. Terms of reference should be agreed with the contracting company/agency before commencing the audit to ensure the purpose and scope of the audit is clear;
- the contracting company complies with relevant legislation (e.g. the Data Protection Act (1998), Human Rights legislation).

Secure contracting – checklist

1. A risk assessment has been conducted to determine the level of risk posed to the contracting authority due to the contractor's access to information/assets.
2. Proportionate pre-employment screening levels have been agreed.
3. The level and standard of screening has been formally communicated to the contractor and contracting company/agency, including mechanisms to deal with adverse information uncovered during screening.
4. A system has been agreed to confirm that the contractor who arrives to work is identical to the individual who has been supplied and screened to work on the contract.
5. Agreed access arrangements have been put in place.
6. Agreed procedure for substituting temporary replacements when the usual contract staffs are away or unavailable.
7. An appropriate audit mechanism has been put in place to monitor compliance with the required pre-employment screening levels of the contracting authority.
8. The pre-employment screening requirements demanded by the contracting authority have been cascaded throughout the entire (sub)contracting chain.

Decision making

The chapter on pre-employment screening policy describes the importance of setting out a clear policy when dealing with pre-employment screening results. Hopefully, the majority of your screening will come back with no adverse traces and you can proceed to employ. However, what are the considerations when dealing with gaps and adverse information received? At what point do you decide not to proceed with the applicant if information is very slow to arrive from overseas, for example? How do you interpret overseas criminal records history?

In common with many organisations, the business manager will often have responsibility for making a final judgement as to whether to progress the applicant in instances where there are time delays, where information is lacking, or where gaps exist. It is good practice for HR to report to the business manager the progress on each screening case periodically and as early as possible so that an informed decision is made.

In difficult cases, decisions should involve as many business areas that have a vested interest. Typically this would include Security, HR and the business manager, as well as a legal adviser where complex legal decisions need to be considered. In instances where adverse criminal records information comes to light, some organisations might choose to give overall decision making to Security and HR, whereas others will let the decision rest with the business managers.

Checks should be considered on a case by case basis, taking into account the full range of information to hand and, in the case of criminal conviction data, the nature and seriousness of the crime. What might be judged as criminal activity in one country may not be the case in the UK. CPNI's *Disclosure of criminal records in overseas jurisdictions* will provide advice in these instances on a country by country basis.

A number of guidelines are available on the internet that provide help in making judgements around whether or not to employ somebody with a criminal record:

- *Employing ex-offenders: a practical guide* - a joint CIPD and CRB publication on implementing fair and reasonable policies and practices, and the legislation covering employment of ex offenders – www.cipd.co.uk/hr-resources/guides/employing-ex-offenders.aspx
- *NACRO guidance on recruiting ex-offenders: the employers' perspective* www.nacro.org.uk/data/files/nacro-2006070300-216.pdf
- *NACRO guidance on recruiting people with criminal records* www.nacro.org.uk/data/files/nacro-2005020104-302.pdf

Generally, consideration should be given to the role that the applicant will be undertaking, the integrity of the individual, severity and patterns relating to criminal records data, as well as any mitigating circumstances.

Assurances about the applicant's integrity and reliability could be gained via alternative methods in instances:

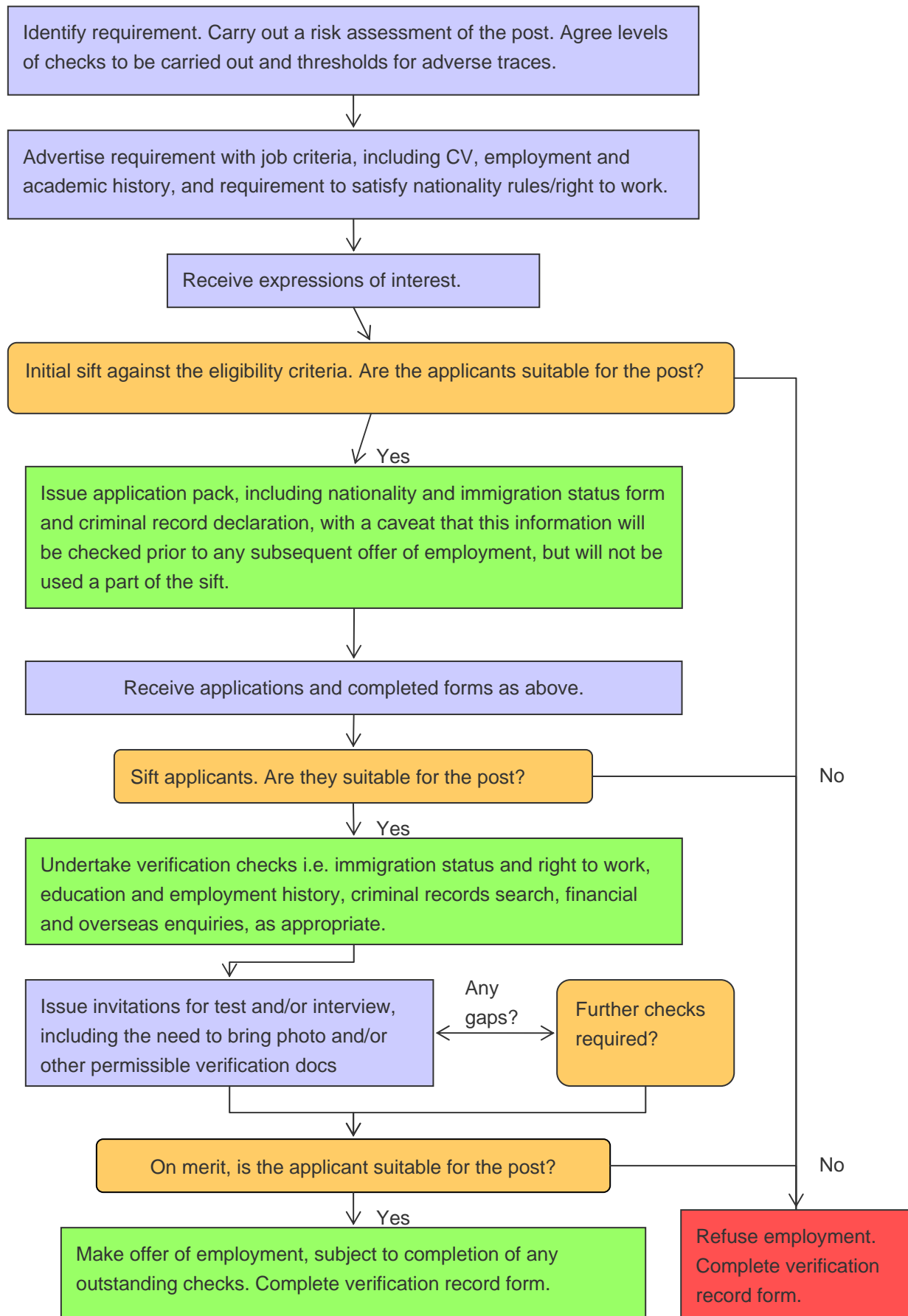
- Where there are major employment gaps.
- Where information is very slow to arrive from the former employer/organisation; or
- Where there is an acceptable reason why information cannot be obtained in respect of a particular country or person.

In such cases a consideration might be given to acquiring a sworn oath and/or a character reference from someone who holds a position which is itself subject to a high degree of background checking, such as a public servant, bank manager, magistrate, medical practitioner, officer of the armed forces, teacher or lawyer. Alternatively an applicant might put forward a religious minister or somebody of standing in the local community. It is worth considering in these instances whether it is possible to verify the referee's credentials.

It simply might not be possible to recruit the applicant as sufficient assurances might not be gained regarding the referee or due to gaps in information. This should not reflect adversely on the applicant or cast any doubt on his or her character. Alternatively, it may be possible to manage the applicant through controlled access and/or supervision until all outstanding checks have been successfully completed.

In all instances, employers should record their decision and their reasons for granting or refusing employment. This is important for auditing purposes, and responding to possible challenges by the applicant or employee in the future.

Appendix A: Example of a pre-employment timetable



Appendix B: Application form

The form should request the following information:

1. **Full name**, including previous names or other names used.
2. **Date of birth**
Asking for age-related information on an application form may be discriminatory⁴. Consider removing D.O.B. from the main application form and include it in a diversity monitoring form to be retained by HR.
3. **Current address**
Do you require previous addresses? If so how far back do you go? This may well be determined by the search requirements of certain checks i.e. County Court Judgments (CCJ), directorships, regulatory and/or national security vetting requirements.
4. **Employment history** (see *Qualifications and employment checks*).
5. **Education history** – including full course details and contact details for the establishment (see *Qualifications and employment checks*).
6. **Criminal history**
Define exactly what type of data you require i.e. convictions and cautions? For most jobs only unspent convictions can be requested (see *Financial checks*).
7. **Clear statements that pre-employment screening will take place**
(if outsourcing consider including the screening business's logo on the application form), and that failure to provide accurate information may result in the application not being taken forward.
8. **Consent by the applicant to undergo pre-employment screening**
If you outsource, the applicant should complete a disclosure and written consent form that is separate from the application form.
9. **Permission to contact the current employer**
10. **Additional information – as required for specific cases**



⁴ The Equality Act 2010.

Appendix C: Example of a verification record

1. Employee/Applicant details

Surname: Forenames:
Previous names:(if applicable)
Address:
.....
..... Tel No:
Date of birth: Place of birth:
Nationality: Former or dual nationality:
(with dates if applicable)

2. Certification of Identity

Document:	Date of issue:
a.
b.
c.
d.

3. References (if taken)

a. Referee:.....
Relationship:.....
Address:
.....
..... Length of association:
b. Referee:.....
Relationship:.....
Address:.....
.....
..... Length of association:
c. Referee:
Relationship:.....
Address:.....
.....
..... Length of association:.....

4. **Other** information (i.e. verification of employment history (past 3 years); verification of nationality and immigration status; unspent criminal record declaration and independent verification via Disclosure Scotland or AccessNI (where undertaken); academic certificates seen; additional checks carried out; etc):

I certify that in accordance with company policy:

I have personally examined the documents listed at 2 above and have satisfactorily established the identity of the above named employee/applicant.

I have obtained the references (if taken) and information listed at 3 and 4 above and can confirm that these satisfy the requirements.

Name:

Appointment/Post:

Signature:Date:

Important: Data Protection Act (1998). This form contains 'personal' data as defined by the Data Protection Act 1998. It has been supplied to the appropriate HR or Security authority exclusively for the purpose of recruitment. The HR or Security authority must protect the information provided and ensure that it is not passed to anyone who is not authorised to see it.

Appendix D: Example of a reference report form

1. Name of applicant:
2. Post applied for:
3. Name of referee:
4. Position:
5. Organisation:
6. In what capacity do you know the applicant?
7. How long have you known the applicant?
8. In what capacity is the applicant employed?
.....
9. Dates of employment: From: To:
10. Salary/wage:
11. Main duties and responsibilities:
.....
.....
12. Please comment on the applicant's suitability for the post with reference to the job description:
.....
.....
.....
13. Do you have any other relevant comments you wish to make regarding the applicant?
.....
.....

The above answers are correct to the best of my knowledge and belief.

Name:

Signature: Date:

Contact address:
.....

Email: Tel No:

Data Protection Act (1998). This form contains 'personal' data as defined by the Data Protection Act 1998. It has been supplied to the appropriate HR or Security authority exclusively for the purpose of recruitment. The HR or Security authority must protect the information provided and ensure that it is not passed to anyone who is not authorised to see it.

Appendix E: Example of a nationality and immigration status form

Note: If you are appointed, documentary evidence will be sought to confirm your answers.

Full name:	
Other name(s) used:	
.....Male or female:	
Date of birth: Place of birth:	
Current/last known address:	
.....	
..... Postcode:	
Nationality at birth:	
Present nationality (if different):	
Please delete as applicable	
Have you ever possessed any other nationality or citizenship?	YES/NO
If YES, please specify:	
.....	
.....	
Are you subject to immigration control?	YES/NO
If YES, please specify:	
.....	
.....	
Are you lawfully resident in the UK?	YES/NO
Are there any restrictions on your continued residence in the UK?	YES/NO
If YES, please specify:	
.....	
.....	
Are there any restrictions on your continued freedom to take employment in the UK? YES/NO	
If YES, please specify:	
.....	
.....	
If applicable, please state your Home Office/port reference number here:	
.....	

Declaration: I undertake to notify any material changes in the information I have given above to the HR or Security branch concerned.

Signature:

Date:

Important: Data Protection Act (1998). This form asks you to supply “personal” data as defined by the Data Protection Act 1998. You will be supplying this data to the appropriate HR or Security authority where it will be processed exclusively for the purpose of recruitment. The HR or Security authority will protect the information which you provide and will ensure that it is not passed to anyone who is not authorised to see it.

By signing the declaration on this form, you are explicitly consenting for the data you provide to be processed in the manner described above. If you have any concerns, about any of the questions or what we will do with the information you provide, please contact the person who issued this form for further information.

For official use only:

Reference:

(Organisation stamp)

Appendix F: Right to work and nationals from the European Economic Area (EEA)

Many nationals from European Economic Area (EEA) countries can enter and work in the United Kingdom without any restrictions. The same rules apply to their immediate family members⁵.

You should **not**, however, employ any individual on the basis of his or her claim to be a national from an EEA country, as you will put yourself at risk of employing someone illegally if the claim is false. Information on employing EEA nationals can be found on the UKBA website at www.ukba.homeoffice.gov.uk/eucitizens. The following information summarises employers' responsibilities when employing EEA nationals:



You should ask nationals from all EEA countries to produce a document showing their nationality. This will usually be either a passport or national identity card. Some nationals from EEA countries may also produce a residence permit, registration certificate or other document certifying or indicating permanent residence issued by the Home Office or UK Border Agency (UKBA) which confirms their ongoing right to reside and work here. All of these documents are included in List A (page 24-25) and, if checked and copied, should provide you with a statutory excuse under section 15 of the Immigration, Asylum and Nationality Act 2006.

If your prospective employee presents you with an identity card, you must check that it describes the holder as a national or citizen of the relevant EEA country. Some EEA countries issue identity cards to individuals who are only resident in their country but who are not nationals. These individuals will usually have cards which make it clear that they are not nationals of the EEA country concerned. You should not accept these as part of your section 15 checks.

Non-European family members of nationals from EEA countries and Switzerland may apply for residence documents which demonstrate their entitlement to work in the UK. However, under European legislation, many are also entitled to engage in employment whilst these applications are under consideration, and before residence documents have been issued by the Home Office. The Home Office will provide such applicants with a certificate of application, which may provide an excuse if it is less than six months old and verified as allowing a work entitlement by the Employer Checking Service. When the application is successful, the family member will have a single document to demonstrate their work entitlement.

If you have any doubts about whether an identity card allows the holder to work or relates to your potential employee, you should ask that person to produce their national passport. If you still have doubts about whether that person is permitted to work in the UK, having carried

⁵Immediate family members refer to a spouse or civil partner; any children or grandchildren of you, a spouse or civil partner who are under 21 years of age and are dependents; and parents or grandparents of you, a spouse or civil partner.

out all the steps one to three (pages 22-23), then you may wish to consider refusing employment to that person until the work entitlement can be established.

If you experience regular difficulties verifying whether national identity cards or passports from EEA countries are genuine, you may also wish to use reference material such as the European Union's Public Register of Authentic Identity and Travel Documents online (PRADO), which has detailed information on European national identity and travel documents. For more information see www.consilium.europa.eu/prado/EN/homeIndex.html.

Employer Checking Service

The UKBA Employer Checking Service verifies an individual's right to work in the UK where the individual has an outstanding application or appeal with the UKBA, or an individual has presented an Application Registration Card (ARC) which states the individual is entitled to work, or the individual has presented a Certificate of Application issued to or for a family member of an EEA or Swiss national which states that the holder is entitled to work. In the second or third instances, the employer must verify the individual's right to work with the Employer checking Service to obtain the excuse against payment of a civil penalty. Further information can be found at www.ukba.homeoffice.gov.uk/business-sponsor/preventing-illegal-working/support/ecs or by calling the Employers' Helpline on **0300 123 4699**.

Members of the European Economic Area (EEA) with full employment rights are:

Austria*	Belgium*	Cyprus*	Czech Republic*
Denmark*	Estonia*	Finland*	France*
Germany*	Greece*	Hungary*	Iceland
Ireland*	Italy*	Latvia*	Liechtenstein
Lithuania*	Luxembourg*	Malta*	The Netherlands*
Norway	Poland*	Portugal*	Slovakia*
Slovenia*	Spain*	Sweden*	United Kingdom* ⁶

Nationals from these EEA countries are not subject to immigration control and can also enter and work freely in the UK. Those countries marked with an asterisk are also members of the EU.

From 1 June 2002, nationals from Switzerland and their family members have also had the same free movement and employment rights as EEA nationals. When this guidance refers to 'EEA countries', Switzerland is included in this definition.

On 1 April 2011, the Workers Registration Scheme for the eight Accession State countries joining the EU on 1 May 2004 (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) closed. Nationals from these countries now enjoy full movement and employment rights.

⁶ Although the UK is a member of the EEA, in general the information in this section is not relevant to British citizens and their families.

Newer members of the European Union and the EEA

On 1 January 2007, Bulgaria and Romania joined the European Union and became part of the EEA. These countries are referred to as 'A2 countries' and their nationals as 'A2 workers'.

From 1 January 2007, employers have needed to confirm that a potential employee is an A2 national before employing them. You should make sure that if they produce a national identity card, this confirms they are a national or citizen of Romania or Bulgaria, which will be classed as a document from List A (page 23). In order to establish a section 15 statutory excuse, you will need to retain a copy of the appropriate documents **before** you employ the individual.

Workers from Romania and Bulgaria will be free to come to the UK, but may be subject to worker authorisation. This means that they are only able to work in the UK if they hold a valid accession worker authorisation document, or if they are exempt. An accession worker authorisation document is:

- a document issued before 1 January 2007 which is still valid that grants leave to enter or remain in the UK and entitles that person to do the work that you are offering, for example a work permit holder; or
- an Accession worker card.

An Accession worker card is evidence of authorisation from the UKBA that the holder can start working. The authorisation will be in the form of a card or a certificate, which will set out any conditions on their employment.

If satisfied that the applicant is actively seeking employment in the UK and is highly skilled, the UKBA will issue authorisation cards and certificates to eligible A2 nationals. Where the A2 worker is not subject to the worker authorisation, they will be issued with a registration certificate that states they have unconditional access to the UK labour market.

Exemptions

If your A2 worker informs you that they are exempt from registering, they will have to provide documentary evidence of this. This will help you to be satisfied that they are exempt from the scheme and will help to establish a statutory defence from conviction for employing an unregistered A2 worker. The documents you should ask them to produce are explained below.

If the A2 national does not have an authorisation certificate, they may be able to establish exempt status by producing another type of documentation. In this case you should check for one of the following documents in addition to their passport/national identity card:

- A document showing that the A2 national has been legally employed without interruption throughout the period of 12 months leading up to 31 December 2006 (this includes any periods of unemployment within those 12 months that do not exceed 30 days in total).

- A document showing that the A2 national has been legally employed in the UK for 12 months partly or wholly after 31 December 2006 (this includes any periods of unemployment within those 12 months that do not exceed 30 days in total).
- A national passport or travel document containing a valid endorsement which states that the holder is a family member of an EEA or Swiss national.
- A national passport or travel document containing a valid endorsement which shows that the holder has indefinite or exceptional leave to enter or remain in the UK, has no time limit on their stay in the UK, or has been granted limited leave to enter or remain with no immigration restrictions on employment.
- A2 nationals here on self-employed basis do not require authorisation to work.
- A2 nationals posted here on temporary basis to provide services on behalf of an undertaking established in an EEA State do not require authorisation.

Those A2 nationals who have a certificate that does not include unconditional access to the UK labour market may apply for access after 1 January 2007 if they can satisfy the UKBA that they meet the qualifying criteria.

Penalties for employing a Romanian or Bulgarian illegally

There will be no offence committed under section 15 of the 2006 Act if an employer is found to be employing a Romanian or Bulgarian after 1 January 2007, as they are classed as an EU/EEA citizen and are therefore not subject to immigration control. However, an employer who hires unauthorised A2 workers will be liable to prosecution in a Magistrates court under the Accession (Immigration and Worker Authorisation) Regulations 2006. On conviction the employer will be liable for a fine of up to £5,000. If the fine is not paid, the court can use bailiffs to seize goods and sell them, or order the employer to be sent to prison.

An A2 employee who works illegally will also be liable to prosecution, or may be given the option of paying a fixed penalty to dispense with that liability. If the penalty is paid no further action will be taken in relation to the offence. If the penalty notice is not paid, or the A2 employee opts for prosecution, the employee will be liable to prosecution.

On conviction the employee may be liable for a fine of up to £5,000 and/or imprisonment for up to 3 months. Any fine will be enforced in the same way as a fine imposed on an employer. In addition, the court can provide for direct deductions from the employee's wages using an attachment of earnings order if the A2 is employed. The A2 may be working legally having subsequently regularised their position by applying for an accession worker card (a purple card) under the Accession regulations.

Full information on employing Bulgarian and Romanian nationals can be found at www.ukba.homeoffice.gov.uk/eucitizens/bulgaria-romania

Appendix G: Right to work Q & A

Which groups in the UK are not subject to immigration control?

The main groups who you can employ without restrictions are:

- British citizens
- Nationals from the Channel Islands, Ireland or the Isle of Man (known as the Common Travel area)
- Commonwealth citizens with the right of abode
- Nationals from EEA countries and Switzerland

Many immediate family members of nationals from EEA countries and Switzerland are also not subject to immigration control, providing that the EEA national is lawfully residing in the UK and exercising their Treaty Rights.



You should not employ any individual solely on the basis of their claim to belong to one of these groups – this will place you at risk of employing someone illegally if their claims are false.

What if a prospective employee cannot satisfy the statutory excuse requirement?

The onus remains on your potential employee to demonstrate that they are permitted to do the job you are offering. You are entitled to withdraw your offer of employment to a potential employee if they cannot produce satisfactory documentation within a reasonable time.

What should I do if I have concerns about the validity of the documents presented to me by a prospective employee?

If you have carried out Steps 1 – 3 (Pages 22-23) and are not satisfied that the applicant is the rightful holder of the documents they have produced or is entitled to work for you, then you should not employ that person.

If you have any other concerns about the validity of the documents, you should contact the Employers' Helpline on 0300 123 4699 for further advice. They will treat any information you provide in confidence and pass this on to the relevant Immigration Service Local Enforcement Office for further investigation. Failing that you should contact the relevant UKBA Local Enforcement Office or the local police, as there may be criminal offences attached to the individual other than the production of the forged document. The police should then contact the local UKBA office.

Please also see CPNI's *Good practice guide on pre-employment screening - document verification*.

How do I record documents produced to me by prospective employees to gain the excuse?

You should always ask for original documents from all job applicants. There are two ways in which you can then make and keep a record of any documents you have seen:

- Make a clear photocopy of the original.
- Scan the original and store a copy, recording the image in a way that cannot be altered i.e. 'Write Once, Read Many (WORM) on a CD-R).

If you use any form of storage technology that can be altered, you will not establish a statutory excuse under the Immigration, Asylum & Nationality Act (2006).

Which parts of the documents do I need to record?

Usually it is advisable to copy every part of any document presented to you by the applicant. If, however, you are provided with a passport or travel document, then you need to copy the following, where available:

- the front cover
- any pages giving personal or biometric details (including nationality) of the holder
- the date showing that the document is still valid
- the page with the photograph of the holder
- the page which shows their signature
- any page containing the UK endorsement or stamp that indicates that the holder is lawfully in the UK and permits the holder to take the employment you are offering them.

To establish an excuse, you must reasonably satisfy yourself that your applicant (or employee, if a repeat check is being undertaken) is the rightful holder of the document and that the document is valid and genuine.

How long do I need to keep the copies of any of the documents I have recorded?

You should keep any copies you have made throughout the period for which you are employing a person; and for at least 2 years after he or she has left your employment. Part 2 of the P45 must also be kept for at least 3 years after the end of the current tax year in order to comply with HM Revenue and Customs regulations.

If a prospective employee only has one of the combination documents contained in either List A or B, what should I do?

If your job applicant only shows one document from specified combinations of documents contained in **List A** or **B** (pages 23-24), you should ask them to produce another specified document, or combination **before** you begin employing them, otherwise you will have not have an excuse for that person. You can choose to keep the offer of employment open until the person has produced a further document which satisfies the requirements, or an acceptable single document.

What if I have an existing employee who I employed on the basis of them producing just one of the documents included in List A or B?

The civil penalty regime only applies to employees who you employ on, or after 29 February 2008. If you have taken on an employee before that date, but after 27 January 1997, providing that you have met the requirements under the previous arrangements, you will have established a statutory defence for that person.

If you took on an employee before 27 January 1997, they will not be subject to section 15 of the 2006 Act, or to section 8 of the Asylum and Immigration Act 1996. However, it is possible that you may have committed a criminal offence under separate legislation.

What happens if the details do not match on the combination of documents produced by the prospective employee under List A or B?

If the names or any other personal details shown on the two documents do not match, then you will not have an excuse and must ask the prospective employee for a further document which explains this difference. This could be a marriage or civil partnership certificate, divorce decree, deed poll or statutory declaration. If this further document satisfies you that there is a genuine reason for the difference in names on the two documents, you should also take a copy of this. This will then form part of your excuse.

If someone cannot account for the difference in names on the documents and cannot produce any of the acceptable single documents of a potential employee, then the safest course of action would be not to employ that person.

You should make sure that you only carry out these extra checks on the basis of the documents produced to you, and where the details do not match.

If a prospective employee only possesses a document with details of their National Insurance (NI) number, does this establish an excuse?

No. A document containing details of a person's NI number will not establish an excuse on its own if produced to you by a prospective employee. You will only establish the statutory excuse if an appropriate document containing a person's permanent NI number and name is presented to you as part of a specified combination.

The Government made this change in respect of section 8 in 2004 because the core purpose of the NI number is to link an individual to their NI contribution record. While the overwhelming majority of people who have a NI number can work in the UK, possession of a number does not always establish that the individual is permitted to undertake all forms of employment in the United Kingdom.

What if a prospective employee does not have a document containing a NI number? Should I obtain a NI number for them after they start working for me?

The overwhelming number of job applicants who do not possess passports, but who are able to work here, will already have been issued with a NI number by the Department for Work and Pensions' Jobcentre Plus.

A person can apply for a NI number by telephoning 0845 600 0643 between 8am and 6pm Monday to Friday. If they are hard of hearing, or have speech difficulties, they should call textphone on 0845 600 0644. Further information about NI numbers and the application process can be found at www.direct.gov.uk/en/MoneyTaxAndBenefits/Taxes/BeginnersGuideToTax/NationalInsurance/index.htm.

Can I employ students?

Students from the EEA or Switzerland can work in the UK during or after finishing their studies. However, Romanian or Bulgarian students may be subject to worker authorisation (see Appendix F).

Students from outside the EEA or Switzerland are permitted to take limited employment, providing their conditions of entry into the UK allow this. There are strict conditions on the type of work students can undertake.

For further information, please visit www.ukba.homeoffice.gov.uk/employers/points or www.ukba.homeoffice.gov.uk/studyingintheuk. These sites also provide details of the changes to student visas introduced in April and July 2011. Annex D of the *Comprehensive guide for employers* (www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventing-illegal-working/) also provides details.

Can I employ asylum seekers or refugees?

Asylum seekers do not usually have the right to work in the UK and may only be lawfully employed if the UKBA has lifted restrictions on their taking employment.

Refugees and those who have been recognised as requiring humanitarian protection have no restrictions on the type of work they can do in the UK, as long as they continue to hold this qualifying status. They are not required to meet the tests of the Points-based System (see Appendix K), and employers are not required to act as sponsors.

For further advice visit www.ukba.homeoffice.gov.uk/asylum/support/employment/, read Appendix B of the *Comprehensive guidance for employers* or contact the Asylum Support Customer Contact Centre on 0845 602 1739.

How will I know if an asylum seeker is able to work?

After 1 May 2004, any asylum seeker who is able to work in the UK must demonstrate this through their Application Registration Card (ARC). This will state 'Allowed To Work' or 'Employment Permitted' on both sides of the card.

You will demonstrate a statutory excuse stating that the holder is permitted to take employment when it is produced, copied and the copy retained in combination with other documentation from List B.

What if an individual presents me with a Standard Acknowledgement Letter (SAL) or Immigration Service 96W (IS96W) letter which states that they are entitled to work?

You should not employ anyone on the basis of seeing either of these documents, as they will not provide you with a statutory excuse against liability for a civil penalty under section 15.

If a job applicant is an asylum seeker who can work, but does not have an ARC, you should advise them to call the UKBA on 0151 213 2174 for further information about how to obtain one.

What if I check other documents which establish evidence of someone's identity?

You must only check the documents specified in **List A and List B** to establish an excuse. The following documents will not provide a statutory excuse under section 15 of the 2006 Act, and employers **should not seek to check** them as part of establishing an excuse:

- Home Office SAL or IS96W letter which states that an asylum seeker can work in the UK.
- National insurance number, when presented in isolation.
- temporary NI Number beginning with TN, or any number which ends with the letters from E to Z inclusive.
- full or provisional driving licence issued by the Driver and Vehicle Licensing Agency.
- bill issued by a financial institution or a utility company.
- licence provided by the Security Industry Authority.
- document check by the Criminal Records Bureau.
- letter issued by the Home Office or UKBA stating that the holder is a British citizen.
- passport describing the holder as a British Dependent Territories Citizen which states that the holder has a connection with Gibraltar.
- short (abbreviated) birth certificate issued in the UK which does not have details of at least one of the holder's parents.
- card or certificate issued by HMRC under the Construction Industry Scheme.

Some passports contain the words 'British' but are not acceptable unless they contain a certificate of entitlement or a relevant endorsement. These are:

- British Visitor's passport;
- A passport that describes the holder as:
 - British National (Overseas);
 - British Dependant Territories Citizen;
 - British Overseas Territories Citizen;
 - British Overseas Citizen;

- British subject or a British protected person.

Where can I get further advice?

If you are concerned about the position of someone who is due to work for you, or is currently working for you, the UKBA Employers' Helpline and Employer Checking Service can provide further details. See www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/support/ecs for details.

HMRC leaflets relating to employed/self-employed tax and national insurance contributions:

ES/FS1 <http://www.hmrc.gov.uk/leaflets/es-fs1.pdf>

ES/FS2 <http://www.hmrc.gov.uk/leaflets/es-fs2.pdf>

You may also wish to seek legal advice before taking making an offer of employment

Appendix H: Points-based system

The points-based system (PBS) began operating in February 2008 and represented the biggest shake-up of the immigration system for 45 years. It replaced over 80 previous different routes for applying to work and study in the United Kingdom with a new, five-tier 'Australian-style' system. The PBS allows British business to recruit the skills they need from abroad while providing assurances to the public that only those migrants (non-settled workers) the economy needs will be able to come to the United Kingdom. For full details please visit www.ukba.homeoffice.co.uk/business-sponsors/points/.

To whom it applies

The PBS system applies to those from outside the EEA and Switzerland. It does not include visitors, family reunification, UK ancestry routes, European Community Association Agreements (ECAA) or business visitors. Dependants are allowed under tiers 1, 2, 4 (general) and 5 (temporary worker). Information relating to immigration regulations for EEA and Swiss nationals can be found at Appendix F.

How the PBS works

Under the PBS migrants must pass a points-based assessment before they are given permission to enter or remain in the UK. The system comprises five tiers with the number of points required dependent on the tier applied under.

Points will be awarded on objective and transparent criteria which may include the applicant's previous or prospective earnings, age, knowledge of the English language and, where appropriate, the level of economic need within the sector the migrant will be working in.

Tiers

The PBS has been developed to help migrants understand the most appropriate tier for them. The tiers are:

1. Highly skilled individuals who will contribute to growth and productivity, including:

Entrepreneurs: who want to invest in the UK by setting up or taking over, and being actively involved in the running of, one or more businesses. No limits on numbers.

Investors: high-net-worth individuals make a substantial financial investment in the UK. On application, investors are awarded points based on their ability to invest £1,000,000 in the UK. No limits on numbers.

Post-study work: retains the most able international graduates who have studied here. During their permission to stay here, post-study workers can look for work without needing to have a sponsor.

Exceptional talent: introduced in 2011. For migrants who have won international recognition in scientific and cultural fields, or who show sufficient exceptional promise to be awarded such recognition in the future. Limited to 1,000 places for 2011/2012.

NB: Tier 1 (General) for highly skilled individuals is now closed.

2. Skilled workers with a job offer from a licensed sponsor and a valid certificate of sponsorship and who have passed the points-based assessment. There are four categories of skilled worker:

General: for foreign nationals who have a skilled job offer to fill a gap in the workforce that cannot be filled by a settled worker. In 2011, the Government introduced annual limits on the numbers of migrants allowed to work in the UK under this category with an annual salary below £150,000. For 2011/2012 the limit is 20,700, broken down into monthly quotas (which can be rolled over to the following month if not fully allocated). There is no limit on the number of workers coming to the UK to do jobs under this category with an annual salary of £150,000 or above. Employees must assign a certificate of sponsorship to a prospective employee within three months.

Intra company transfer: for employees of multinational companies who are being transferred by their overseas employer to a UK branch of the organisation, either on a long-term basis or for frequent short visits. In 2011, the Government introduced changes to this category: jobs will have to be in an occupation on the Graduate Occupation List. The leave to remain granted will now depend on the salary earned (three years for salaries between over £40,000, with the possibility of extending for a further two years; for salaries between £24,000 and £40,000, leave to remain will be for no longer than 12 months).

Ministers of religion: for those wishing to take up employment or posts or roles within their faith communities in the UK as ministers of religion undertaking preaching and pastoral work, missionaries or members of religious orders. Separate arrangements exist for those wishing to undertake study (Tier 4) or working full-time as a teacher in a school run by a church or missionary organisation (Tier 2 General).

Sports people: for elite sportspeople and coaches who are internationally established at the highest level, who will make a significant contribution to the development of their sport.

3. Limited numbers of low skilled workers needed to fill temporary labour shortages, for example construction workers for a particular project – currently closed.

4. Students

5. Those allowed to work in the UK for a limited period of time to satisfy primarily non-economic objectives, comprising two categories:

Temporary workers (with sub-categories for creative and sporting, charity, religious, government authorised exchange, and international agreements).

The youth mobility scheme (for sponsored young people to come and live and work in the UK for up to 24 months).

Switching (moving while in the United Kingdom from one immigration category to another) is allowed for applicants currently in the UK with permission to stay under Tiers 1, 2 and 4. Tiers 3 and 5 are temporary routes and migrants in them will not be able to switch once they are in the United Kingdom.

Tiers 1 and 2 (with the exception of intra company transfers) may lead to settlement in the UK if requirements are met at the time of that application. However, applicants must show sufficient English language ability and knowledge of life in the UK. For full details please visit www.ukba.homeoffice.gov.uk/visas-immigration/settlement .

Sponsorship

Except under Tier 1, migrants will need their application to be sponsored as follows:

Tier Group	Sponsor organisation
Tier 1	No sponsor necessary
Tier 2	A UK based employer
Tier 3	Tier currently closed
Tier 4	A UK based educational institution
Tier 5 (temporary workers)	A UK based employer
Tier 5 (youth mobility scheme)	The appropriate national government

In order to obtain a licence, a prospective sponsor will need to apply online to the UKBA and supply the specified documentation by post along with a fee. A licence may be refused if there is anything in the sponsor body's history, or that of the people managing or controlling it, which suggests that it could be a threat to immigration control or that it would be unable or unwilling to carry out its obligations.

Once licensed, the sponsor will be able to issue certificates of sponsorship, also at cost, to migrants proposing to work or study in the UK. Sponsors will also be granted access to UKBA's sponsor management system.

Sponsorship duties

Sponsors are fully responsible for the actions of any migrant they employ or teach. They must ensure the system is not abused, maintain their duties of record keeping, reporting and compliance, and that migrants comply with their immigration conditions. If sponsors do not comply with their duties they can have their licence downgraded or revoked (see below).

Sponsorship ratings and support for employers

On application, the UKBA will investigate the prospective licensee's suitability as a sponsor. The UKBA will only award licences to genuine organisations which are likely to comply with their duties. The ratings the UKBA can award are:

A-rating: where the sponsor has no evidence of abuse, and has all the necessary systems in place to fulfil their duties.

B-rating: where the correct systems are not in place or adequate to meet the sponsor's duties, or where there is previous evidence of abuse.

A-rated sponsors who fail to comply with any of their sponsor duties may be downgraded to a B-rating. B-rated sponsors cannot assign any new certificates of sponsorship to new migrants until they have demonstrated their commitment to make improvements by signing

up to measures set out in a sponsorship action plan to help them become A-rated, otherwise they risk having their licence revoked. A key component of a licence, for example, is having sound HR systems to help monitor and keep records of the migrants employed.

The maximum period a sponsor can be under a sponsorship action plan is 12 months. The UKBA will review the position every 3 months. If the sponsor is still B-rated after 12 months, the UKBA will automatically revoke the licence.

The UKBA's sponsorship and employers' helpline (0300 123 4699) provides information to employers and education providers about sponsorship under the PBS, and advice to employers about preventing illegal working. The UKBA also provides extensive information available through the UKBA website, and support in using the sponsor management system.

Sponsorship and the illegal working provisions

Under the Immigration, Asylum and Nationality Act 2006 employers can face tough penalties, including an unlimited fine and/or a maximum of two years' imprisonment, if found knowingly employing illegal migrant workers. There is also a system of civil penalties for employers who employ illegal migrant workers where it is found that their recruitment and employment practices are inadequate or negligent.

A sponsor is in danger of losing its licence temporarily or being downgraded to a B-rating if a civil penalty is issued. Where a licensed sponsor is convicted of knowingly employing illegal migrant workers it is likely that it will lose its licence altogether. For full details please visit www.ukba.homeoffice.gov.uk/employers/points.



Biometric Residence Permit (BRP)

On 25 November 2008 the UKBA changed the way it issues permission to stay in the UK. The BRP (formerly known as the Identity Card for Foreign Nationals) is a form of residence permit and replaces the less secure vignettes placed in passports.

The permit is proof of the holder's nationality and their right to stay, work or study in the UK. It can also be used as a form of identification (for example, to open a bank account in the UK). Permit holders must show it to employers prior to commencing employment. Employers will be able to accept this, alongside other recommended documents to confirm the identity and entitlement to work of their prospective employees, and thereby obtain their statutory excuse against liability to pay a civil penalty.

All applicants aged six and above are required to give their biometrics. These will be scans of all ten fingerprints and a digital photograph. Applicants under six are not required to provide fingerprints. The features of the BRP are uniform across all EU member states.

Appendix I: Criminal convictions – rehabilitation periods

The length of the rehabilitation period depends on the sentence given – not the offence committed. For a custodial sentence, the length of time actually served is irrelevant: the rehabilitation period is decided by the original sentence. Currently, custodial sentences of more than 2.5 years can never become spent. There are proposals to include custodial sentences of more than 2.5 years in the Rehabilitation of Offenders Act, and to replace the notion of ‘rehabilitation periods’ with much shorter ‘disclosure periods’. Legislation may follow in the future. Please refer to the websites listed on page 34 for details on this and other updates. The following sentences become spent after fixed periods from the date of conviction:

Sentence	Rehabilitation period	
	People aged 18 or over when convicted	People aged 17 and under when convicted
Prison and young offender institution term of 6 months or less	7 years	3.5 years
Prison and young offender institution term of more than 6 months, up to 2.5 years	10 years	5 years
Fine, compensation, probation ⁷ , community service order or combination order ⁸ , action plan, curfew order, drug treatment and testing order or reparation order	5 years	2.5 years
Absolute discharge	6 months	6 months
Sentence	Rehabilitation period	
	People aged 12, 13 or 14 when convicted	People aged 15, 16 or 17 when convicted
Detention and training order of 6 months or less	1 year after order expires	3.5 years
Detention and training order of more than 6 months	1 year after order expires	5 years
Sentence		Rehabilitation period
Probation ⁹ , supervision order, conditional discharge or bind-over		1 year or until the order expires (whichever is longer)
Attendance centre order		1 year after the order expires
Hospital order (with or without a restriction order)		5 years or 2 years after the order expires (whichever is the longer)
Referral order		Once the order expires

⁷ People convicted on or after 3 February 1995. Probation orders are now called community rehabilitation orders.

⁸ Community service orders are now called community punishment orders. Combination orders are now called community punishment and rehabilitation orders.

⁹ People convicted before 3 February 1995.

Appendix J: Example of a criminal record declaration form

Note: If you are appointed, a check against the National Collection of Criminal Records may be undertaken and documentary evidence sought to confirm your answers.

Surname:

Full Forenames:

Date of birth: Place of birth:

Full permanent address:.....

..... Postcode:

1. Have you ever been convicted or found guilty by a Court of any offence in any country (excluding parking but including all motoring offences even where a spot fine has been administered by the police) or have you ever been put on probation (probation orders are now called community rehabilitation orders) or absolutely/conditionally discharged or bound over after being charged with any offence or is there any action pending against you? You need not declare convictions which are “spent” under the Rehabilitation of Offenders Act (1974).

YES / NO (delete whichever is not appropriate)

Details:

2. Have you ever been convicted by a Court Martial or sentenced to detention or dismissal whilst serving in the Armed Forces of the UK or any Commonwealth or foreign country? You need not declare convictions which are “spent” under the Rehabilitation of Offenders Act (1974).

YES / NO (delete whichever is not appropriate)

Details:

I declare that the information I have given on this form is true and complete to the best of my knowledge and belief. In addition, I understand that any false information or deliberate omission in the information I have given on this form may disqualify me for employment.

Signature:

Date:

The information you have given above will be treated in strict confidence

Important: Data Protection Act (1998). This form asks you to supply “personal” data as defined by the Data Protection Act 1998. You will be supplying this data to the appropriate HR or Security authority where it may be processed exclusively for the purpose of a check against the National Collection of Criminal Records. The HR or Security authority will protect the information which you provide and will ensure that it is not passed to anyone who is not authorised to see it.

By signing the declaration on this form, you are explicitly consenting for the data you provide to be processed in the manner described above. If you have any concerns, about any of the questions or what we will do with the information you provide, please contact the person who issued this form for further information.

Glossary

A2	Bulgaria and Romania (Right to Work). Nationals from these countries may be subject to worker authorisation.
ARC	Application Registration Card
BPSS	Baseline Personnel Security Standard
BS7858	British Standard 7858 for the screening of individuals in a security environment
BRP	Biometric Residence Permit
CCJ	County Court Judgment
CNI	Critical National Infrastructure
CRB	Criminal Records Bureau
DPA	Data Protection Act 1998
DVLA	Driver and Vehicle Licensing Authority
DWP	Department for Work and Pensions
EEA	European Economic Area
EU	European Union
FCO	Foreign and Commonwealth Office
FSA	Financial Services Authority
HMG	Her Majesty's Government
HMRC	Her Majesty's Revenue and Customs
HR	Human Resources
IPS	Identity and Passport Service
ISD	Immigration Status Document
JP	Justice of the Peace
NSV	National Security Vetting
PBS	Points-Based System
PNC	Police National Computer
ROA	Rehabilitation of Offenders Act
SAL	Standard Acknowledgement Letter
SAR	Subject Access Request
SIA	Security Industry Authority
UKBA	UK Border Agency
UK NARIC	National Recognition Centre for the United Kingdom
WORM	Write once read many