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# Recruitment of people with criminal records and handling of disclosure information

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Cwmpas is a registered society under the Co-operative and Community Benefit Societies Act 2014, number 24287R.

We welcome correspondence in English or Welsh and aim to provide an equal standard of service in both languages.

## Policy statement

- 1.1 We recognise that the attraction and recruitment of skilled people who share our values is central to the achievement of our vision and missions.
- 1.2 We want to be a diverse and inclusive employer, and we are committed to managing our recruitment and selection processes in a fair, equitable and responsible manner.
- 1.3 A criminal record is not always a barrier to employment. This document outlines how criminal records and disclosure information will be managed during our recruitment process.

## Scope

- 2.1 This policy applies to the recruitment and selection of people with a criminal record, whether they are existing or potential Cwmpas employees.
- 2.2 This document will be made available online to all applicants at the outset of the recruitment process.

## Procedure

### Rehabilitation of Offenders Act

- 3.1 The Rehabilitation of Offenders Act (ROA) 1974 was introduced to ensure that ex-offenders who have not re-offended for a period of time since the date of their conviction are not discriminated against when applying for jobs.
- 3.2 Under the 1974 Act, following a specified period of time (which varies according to the disposal administered or sentence passed) cautions and convictions may become spent. As a result the offender is regarded as rehabilitated. Cautions and convictions resulting in prison sentences of over four years and all public protection sentences (i.e. specified sexual and violent offences) are excluded from this.
- 3.3 For most purposes, the 1974 Act treats a rehabilitated person as if he or she had never committed / been charged with / prosecuted for / convicted of / sentenced for the offence. As a result, once a caution or conviction becomes spent under the Act, a person does not have to declare it when applying for a job.
- 3.4 There are some exceptions where an applicant may have to declare spent cautions and convictions. These are listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. This recognises that there are certain activities for which fuller disclosure of a person's criminal record history is relevant, for example, where there is a real risk to children, other people in vulnerable circumstances or some other particularly sensitive areas of work. Examples of the types of occupations, posts and

activities in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 are listed in Appendix 1.

## Recruitment and disclosure

- 3.5 Criminal records disclosures will be made to both Cwmpas directly, and also via the DBS process. Cwmpas will not discriminate unfairly against anyone on the basis of a conviction or other information revealed.
- 3.6 For most roles within Cwmpas, the Exceptions Order does not apply. Where the Exceptions Order does apply, the job advert will state that a "standard" or "enhanced" criminal record check may be required. In these circumstances, a job applicant will be required to list all cautions and convictions, including those that are spent.
- 3.7 Cwmpas does not currently have any roles where "protected" cautions and convictions need to be disclosed i.e. where the job or activity is one which is of the utmost integrity and full disclosure is required in order to maintain public trust and confidence. This includes jobs or activities relating to national security, police constables, judicial appointments and firearms certificates.
- 3.8 In order to avoid deterring people with a criminal record from applying to Cwmpas for employment, Cwmpas will not ask for criminal record disclosure information at application stage and rather will delay this until an offer of employment is being considered for an individual. Any offers of employment will be conditional upon the review of any criminal record disclosure.
- 3.9 Applicants should provide full details in writing of the circumstances via the form that will be provided by the People and Culture team. An example of the questions asked in the form is provided in Appendix 2. It may also be necessary for an individual to participate in an open discussion about the matter. This information will then be considered, along with any other information that may be relevant to the position, by a review panel made up of persons who have specific duties relevant to the recruitment and vetting process, which may include the People and Culture team, the appointing manager and members of the Senior Leadership Team.
- 3.10 Having a criminal record will not necessarily bar an individual from working for Cwmpas. This will depend on the nature of the position and the circumstances and background of the offences. All cases will be examined on an individual basis and will take the following into consideration:
- The nature of the offence.
  - Whether the conviction is relevant to the position applied for.
  - The seriousness of any offence revealed.
  - The age of the applicant at the time of the offence(s).
  - How long ago the offence took place.
  - Whether it was an isolated offence or part of a pattern of offending.

- The circumstances surrounding the offence(s) and the explanation(s) offered by the person concerned.
  - Whether the applicant's circumstances have changed since the offending behaviour.
  - Any other known information about the person's conduct before and after the offence.
  - The likelihood of the individual being placed at risk.
  - The likelihood of the individual being a risk to children and / or vulnerable adults.
- 3.11 To assist with the review process, a summary of different types of criminal offence in the UK is provided in Appendix 3.
- 3.12 Following due consideration, it may be necessary to withdraw an offer of employment. A discussion with the individual will always be held prior to such action.
- 3.13 An applicant's failure to reveal information that is relevant to the position sought could also lead to the withdrawal of an offer of employment, or, in the case of existing staff, disciplinary action being taken, up to and including dismissal. A discussion with the individual will always be held prior to such action.

## DBS checks

- 3.14 The Disclosure and Barring Service (DBS) helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups by processing and issuing DBS checks.
- 3.15 As an employer, Cwmpas may request that a job applicant completes a DBS check. There are four levels of checks, details of which are outlined in Appendix 4.
- 3.16 A DBS check will only be requested after an assessment has indicated that one is both proportionate and relevant to the position concerned and meets eligibility criteria where relevant (please see Appendix 4 for details). Cwmpas will only ask people to provide details of convictions and cautions that we are legally entitled to know about.
- 3.17 Where a DBS check is required, the job advertisement will clearly state this. The cost of the check will be met by Cwmpas.
- 3.18 Cwmpas will comply with the requirements of the DBS Code of Practice. Any person who is asked to undertake a DBS disclosure should familiarise themselves with the DBS Code of Practice, which can be provided by the People and Culture team upon request or found here: <https://www.gov.uk/government/publications/dbs-code-of-practice>
- 3.19 In line with legislation introduced in May 2013, some old and minor cautions and convictions are no longer subject to disclosure. Guidance on this "filtering" can be obtained here: <https://www.gov.uk/government/collections/dbs-filtering-guidance> .

## Handling disclosure information

- 3.20 As an organisation using the DBS checking service to help assess the suitability for applicants for positions of trust, Cwmpas complies fully with the code of practice regarding the correct handling, use, storage, retention and disposal of certificates and certificate information, including hard copy and electronically transferred information.
- 3.21 Cwmpas also complies fully with its obligations under the General Data Protection Regulations and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of certificate information.
- 3.22 Certificate information will be stored electronically in a password protected file (which is not the individual's personnel file).
- 3.23 In accordance with section 124 of the Police Act 1997, certificate information is only passed to or accessible by those who are authorised to receive it in the course of their duties. Cwmpas recognises that it is a criminal offence to pass this information to, or share electronic access information with, anyone who is not entitled to receive it.
- 3.24 Certificate information will only be used for the specific purpose for which it was requested, and for which the applicant's full consent has been given.
- 3.25 Once a recruitment (or other relevant) decision has been made, certificate information will not be kept for longer than is necessary. This is generally for a period up to six months, to allow for the consideration and resolution of any disputes or complaints. If, in very exceptional circumstances (identified in the DBS Code of Practice including any independent regulatory requirements relating to the retention of the Disclosure information), it is considered necessary to keep such information for longer than six months, DBS will be consulted and full consideration will be given to the Data Protection and Human Rights of the individual before doing so. Throughout this time, the usual conditions regarding safe storage and strictly controlled access will prevail.
- 3.26 Once the retention period has elapsed, certificate information will be destroyed via secure means i.e. shredding, pulping or burning. Whilst awaiting destruction, information will not be kept in any insecure receptacle (e.g. waste bin or confidential waste sack).
- 3.27 No photocopy or other image of the certificate or any copy or representation of the contents of a certificate will be kept. Notwithstanding this, the People and Culture team will keep a record of the date of issue of a certificate, the name of the subject, the type of certificate requested, the position for which the certificate was requested, the unique reference number of the certificate and the details of the recruitment decision taken.

## Review

- 4.1 This policy will be reviewed on a biennial basis by the Head of People and Culture, or earlier in the event of relevant legislative changes.
- 4.2 The next date for review is July 2025.



## Appendix 1: Examples of the types of occupations, posts and activities in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

1. Regulated activity with children and other activities which involve working closely with children such as caring for, training, supervising or being solely in charge of children under 18 (including adoption, fostering, day care and childminding).
2. Regulated activity and other activities which involve caring for, training, supervising or being solely in charge of other people in vulnerable circumstances (including social work and advocacy services).
3. Employment in healthcare professions (including medical practitioners, dentists, nurses, midwives, optometrists, registered pharmacists and osteopaths).
4. Employment concerned with national security (including the provision of air traffic services and employment by the UK Atomic Energy Authority).
5. Employment in the legal profession (including barristers, solicitors, legal executives, the Crown Prosecution Service and judicial appointments).
6. Offices and positions in HM Courts and Tribunals Service and the Judicial Office (including Justices' and sheriff's, court and tribunal security officers and contractors with unsupervised access to court-houses, tribunal buildings, offices and other accommodation used in relation to the court or tribunal).
7. Employment in law enforcement (including police constables and cadets, the naval, military and air force police, traffic wardens and employment in the Serious Fraud Office (SFO) and the Serious Organised Crime Agency (SOCA)).
8. Offices responsible for the enforcement of warrants and writs (including Court officers who execute county court warrants, High Court enforcement officers, sheriffs and Civilian enforcement officers).
9. Employment in the Prison and Probation Services (including prison and probation officers, members of boards of visitors etc).
10. Employment in the financial sector (including chartered and certified accountants, actuaries and all positions for which the Financial Conduct Authority or the competent authority for listings are entitled to ask exempted questions to fulfil their obligations under the Financial Services and Markets Act 2000).
11. For licensing purposes (including the National Lottery, gambling, firearms and drugs licensing purposes, Security Industry Authority licences, and licensing hackney carriages or private hire vehicle drivers).

## Appendix 2: Criminal records disclosure form



### Criminal record disclosure form

#### Part A: To be completed by the current / prospective employee

Name:	
If you are a current employee, please enter your current job title:	
If you are a job applicant, please enter the job title of the role you have applied for:	
Have you been convicted of any criminal offence, which is not considered "spent" under the Rehabilitation of Offenders Act (ROA) 1974?	Yes <input type="checkbox"/> No <input type="checkbox"/>
<i>For roles where a standard or enhanced criminal record check is required (i.e. the Exceptions Order applies):</i> Have you been convicted of any criminal offences which are considered "spent" and not "protected" under the Rehabilitation of Offenders Act (ROA) 1974?	Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable <input type="checkbox"/>

If you have answered yes to either of the questions above, please provide full details, using a continuation sheet for additional convictions / sentences if necessary:

#### Conviction / Sentence 1

The nature of the conviction / sentence	
A description of the circumstances leading to the conviction / sentence and any explanation or mitigating factors that should be taken into consideration.	
Date of the offence	
Your age at the time of the offence	
Was this your first conviction / sentence?	Yes <input type="checkbox"/> No <input type="checkbox"/>

#### Conviction / Sentence 2

The nature of the conviction / sentence	
A description of the circumstances leading to the conviction / sentence and any explanation or mitigating factors that should be taken into consideration.	
Date of the offence	
Your age at the time of the offence	
Was this your first conviction / sentence?	Yes <input type="checkbox"/> No <input type="checkbox"/>

Signature:

Date:



## Part B: To be completed by Cwmpas review panel

### Review Panel

Review Panel Member 1 (Senior Leader)	
Review Panel Member 2 (Hiring Manager)	
Review Panel Member 3 (People and Culture representative)	
Date of review:	

### Findings

Is the nature of the offence relevant to the position applied for? If so, how?	
Which category best describes the type of offence(s)? (see Appendix 3 for information)	Indictable only <input type="checkbox"/> Either way <input type="checkbox"/> Summary offence <input type="checkbox"/> Unknown <input type="checkbox"/>
Does the offence pose a risk to children and or vulnerable adults? If so, how?	
Does the offence pose a risk to colleagues or other stakeholders? If so, how?	
Does the offence pose a risk to Cwmpas? If so, how?	
Does the age of the person at the time of the offence or length of time passed since the offence reduce risk to the business to an acceptable level? If not, why?	
Does the person's behaviour since the offence reduce risk to the business to an unacceptable level (e.g. one off offence, circumstances changed since the offence etc)? If not, why?	
Other comments	
Can employment continue?	Yes <input type="checkbox"/> No <input type="checkbox"/>

### Signatures

Review Panel Member 1 (Senior Leader)	
Review Panel Member 2 (Hiring Manager)	
Review Panel Member 3 (People and Culture representative)	

### Appendix 3: Types of Criminal Offence in UK Law

<b>Type of Criminal Offence</b>	<b>Examples</b>	<b>Court and Sentencing</b>
Indictable only offences	The most serious offences including: <ul style="list-style-type: none"> <li>• Murder</li> <li>• Rape</li> <li>• Manslaughter</li> <li>• Robbery</li> <li>• Possession of a firearm</li> <li>• Causing death by dangerous driving</li> </ul>	Can only be dealt with in Crown Court. Maximum sentences are long. Many indictable only offences carry a maximum sentence of life imprisonment. A jury will decide on a defendant's innocence or guilt. It is always for the judge to pass sentence.
Either Way Offences	The range is very wide and can include: <ul style="list-style-type: none"> <li>• Theft</li> <li>• Fraud</li> <li>• Assault and GBH</li> <li>• Possession of controlled drugs</li> <li>• Possession of an offensive weapon</li> <li>• Dangerous driving</li> <li>• Certain sexual offences such as possession of indecent images</li> <li>• Various regulatory offences</li> </ul>	Can be heard in the Magistrate's Court or Crown Court. The main factor in deciding which court will deal with an either way offense is the likely sentence the defendant will face if found guilty. E.g. a theft such as shoplifting would remain in Magistrate's Court, whereas a theft involving higher sums of money and/or a wider impact on victims would be sent to Crown Court. The maximum sentence for an either way offence dealt with by the Magistrate's Court is 6 months. If heard by the Crown Court, the maximum penalty is whatever the maximum for that offence is by law.
Summary offences	The least serious type of criminal offence including: <ul style="list-style-type: none"> <li>• Low level motoring offences</li> <li>• Minor criminal damage</li> <li>• Common assault</li> <li>• Being drunk and disorderly</li> <li>• Taking a motor vehicle without consent</li> </ul>	Summary offences can only be tried in a Magistrate's Court. However, if a summary offence is attached to another crime in the "either way" or "indictable only" category it may, in some circumstances, be dealt with in Crown Court. Usually, the maximum sentence is 6 months imprisonment or a £5,000 fine. Magistrate's Court can also give punishments such as bans or community service.

## Appendix 4: Types of DBS check

1. **Basic check** – these can be used for any position or purpose, including employment. A basic certificate will contain details of convictions and cautions from the Police National Computer (PNC) that are considered to be unspent under the terms of the Rehabilitation of Offenders Act (ROA) 1974.

An individual can apply for a Basic check directly to DBS through the online application route, or an employer can apply for a basic check on an individual's behalf, through a "Responsible Organisation".

2. **Standard check** – this is for duties, positions and licences included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 e.g. court officers, employment within a prison and Security Industry Authority (SIA) licences.

The certificate will contain details of both spent and unspent convictions, cautions, reprimands and warnings that are held on the Police National Computer, which are not subject to filtering.

An individual cannot apply for a standard check by themselves. There must be a recruiting organisation who needs the applicant to get the check. This is then sent to DBS through a Registered Body. The service is free for volunteers.

3. **Enhanced check** – The enhanced check is available for specific duties, positions and licenses included in both the Rehabilitation of Offenders Act 1974 (Exceptions Order 1975) and the Police Act 1997 (Criminal Records) regulations, for example, regularly caring for, training, supervising or being solely in charge of children, specified activities with adults in receipt of health care or social care services and applicants for gaming and lottery licenses.

An enhanced level certificate contains the same PNC information as the standard level certificate but also includes a check of information held locally by police forces.

An individual cannot apply for an Enhanced check by themselves. There must be a recruiting organisation who needs the applicant to get the check. This is then sent to DBS through a Registered Body. The service is free for volunteers.

4. **Enhanced with a barred list check** – The enhanced check with barred list check(s) is only available for those individuals who are carrying out regulated activity and a small number of positions listed in Police Act 1997 (Criminal Records) regulations, for example, prospective adoptive parents and taxi and Private Hire Vehicle (PHV) licenses.

An enhanced level certificate with barred list check(s) contains the same PNC information and check of information held locally by police forces as an enhanced level check but in addition will check against the children's or adults' barred lists. People on the barred lists cannot do certain types of work involving children and/or adults.

## Appendix 5: Glossary of Terms

### **Disclosure and Barring Service**

An organisation which processes and issues DBS checks for England, Wales, the Channel Islands and the Isle of Man. The Disclosure and Barring Service also maintains the Adults' and Children's Barred Lists and makes considered decisions as to whether an individual should be included on one or both of these lists and barred from engaging in regulated activity.

### **Filtering**

The term used to describe the process that identifies which criminal records will be disclosed on a Standard or Enhanced DBS check.

### **Barred Lists (Children and Adults)**

Databases that contain details of individuals that have been banned from working with children or vulnerable adults due to past behaviour or offences. The idea of barred lists is to protect vulnerable people from potential harm caused by predatory, violent, and abusive criminals. The DBS is responsible for compiling, maintaining, and checking the barred lists. If an individual's name appears on one of the barred lists, they are automatically disqualified from any role that involves working with either vulnerable group.

The Barred list is reserved for Enhanced DBS Checks with the additional Barred List check. It is illegal for an employer to request or apply for an Enhanced DBS Check with Barred List if the role does not require it, i.e. it is not defined to be a regulated activity. For people that are engaged in, or applying to do, a role that involves a regulated activity, getting an Enhanced DBS Certificate and Barred List Check is legally required and the employer must request one before the person can continue or start work. The enhanced check application must be verified and submitted by the employer, it cannot be submitted by the individual alone.

### **Regulated Activity**

A regulated activity is a work activity that is classed as being very safeguarding-critical by the DBS. It almost always involves working closely with children or vulnerable adults. There are actually two definitions set out by the DBS, one for children and the other for vulnerable adults:

For working with children, a regulated activity is defined as:

- Unsupervised work in close proximity to children – e.g. schools or childcare facilities
- Unsupervised teaching, coaching, training, counselling, or caring for children
- Transporting children unsupervised – e.g. school-bus driver

For working with vulnerable adults, a regulated activity is defined as:

- Unsupervised healthcare services with vulnerable adults
- Social work
- Providing personal care
- Assisting vulnerable adults with day-to-day living
- Transporting vulnerable adults – e.g. mini-bus driver

### **Responsible Organisation**

A Responsible Organisation (RO) is an organisation registered with the DBS to submit basic checks through a web service.