

Wiltshire Council Human Resources

Criminal Records Disclosures Policy and Procedure

This policy can be made available in other languages and formats such as large print and audio on [request](#).

What is it?

This policy outlines the council's procedure for obtaining criminal record disclosure (CRB) checks. This policy **is transitional until some provisions of the Safeguarding Vulnerable Groups Act 2006 are fully implemented by the introduction of the Protection of Freedoms Act 2012**. Further changes to this policy will be made during 2012 and 2013 as the new Act is implemented.

The council will continue to use enhanced CRB disclosures as part of its pre-employment processes for new employees who will be engaged in 'regulated activity' or work in specified settings during this transitional period. **For some roles, however, which have been removed from the category of regulated activity by the Act, this may not now include a barred list check.**

Who does it apply to?

This policy applies to anyone applying for or working in roles providing **specific** services relating to:

- Children; or
- adults – only those who may require certain **services which lead to that adult being considered vulnerable at that particular time.**

It applies to job applicants, current employees and any other individuals, including those working in schools.

When does it apply?

It applies to all prospective and current employees who **will be or who** are engaged in 'regulated activity' and includes those specific roles where CRB disclosure checks are a requirement of professional registration or formal inspection. **It also applies to volunteers.** **At present, for some roles requiring a CRB check, a re-check must also be carried out every three years but this may change over a transitional period.** **Only those people aged 16 or over can apply for a CRB check.**

What are the main points?

Wiltshire Council's corporate commitment to safer recruitment and safeguarding

1. Wiltshire Council is committed to promoting the safety and wellbeing of all its service users, particularly those who would be incapable of protecting themselves from physical or sexual abuse, financial exploitation, or where there is a potential danger that their will or moral wellbeing may be subverted or over-powered (Section 115 (4)(a) Police Act 1997).
2. The council is committed to safer recruitment practices when recruiting new employees to work for the council or when using volunteers, specifically where their normal working will be with children or vulnerable adults and is in 'regulated activity'.
3. Enhanced [criminal record bureau](#) (CRB) disclosure checks are required for specified roles working with the council. CRB disclosure checks are only one element of a wider framework of safer recruitment practices and the council requires you to provide answers honestly to questions asked of you. Refer to [guidance for managers to safer recruitment](#) and [CRB - frequently asked questions](#).
4. There is specific guidance which the council follows if your role is within the services for children or vulnerable adults. Refer to [guidance for managers to safer recruitment](#).
5. Wiltshire Council will continue to follow robust recruitment and selection processes in order to effectively manage risk with the aim of protecting children and vulnerable adults, including checking your identity, qualifications and references. The council will also make enquiries regarding your career history and your suitability to work with children and vulnerable adults.

Employment issues

Working with children and young persons

6. If you will be working for Wiltshire Council with children or young people in regulated activity, you must also act in accordance with the following [guidelines - AMA guidance to safer working practice for adults who work with children and young people 2007](#).

Working with vulnerable adults

7. If you intend to work with vulnerable adults for Wiltshire Council you must also observe the following - [policy for safeguarding vulnerable adults in Swindon and Wiltshire](#).

Definition of a vulnerable adult

8. A vulnerable adult will be aged 18 years or over.
9. An adult may be considered to be vulnerable **at the time they require certain services provided to them:**
 - accommodation and nursing or personal care in a care home; or
 - personal care in their own home through a domiciliary care agency; or
 - health care services provided by an independent hospital, independent clinic, independent medical agency or National Health Service body; or
 - is an expectant or nursing mother living in residential care;
 - is receiving direct payments from the council in lieu of social care services;
 - services provided in an establishment catering for a person with learning difficulties.

and in consequence of any one, or any combination, of the following factors:

- a substantial learning or physical disability; or
- a physical or mental illness, chronic or otherwise, including an addiction to alcohol or drugs; or
- a substantial reduction in physical or mental capacity due to advanced age;

they are substantially dependent upon others in performing basic physical functions, or their ability to communicate with those providing services or to communicate with others is severely impaired, and, as a result, they would be incapable of protecting themselves from assault or other physical or mental abuse, or there is a potential danger that their will or moral well being may be subverted or over powered.

Promotions, transfers and secondments

10. If you are moving from a role where a CRB disclosure check is not needed into a new role which is a regulated activity you will not be able to start work in the new role until a CRB disclosure check has been obtained. This will include if you are currently working in a role supporting children to a role supporting vulnerable adults or vice versa.

TUPE transfers

11. Where employees transfer to Wiltshire Council as part of a service transfer under the Transfer of Undertakings (TUPE) Regulations, the CRB disclosures of such staff will transfer to Wiltshire Council. Where necessary CRB re-checks will be undertaken on those transferred staff whose CRB disclosures are older than three years at the point of transfer.

The role of the CRB team

12. The [CRB team](#) will ensure each individual application is eligible for a CRB disclosure check, first checking that:
 - the position applied for is in 'regulated activity';
 - it has a specific category code under which the position is eligible for a CRB check;
 - an explanation can be given as to why this category code applies to the position in question.
13. The [CRB team](#) may need to verify information with recruiting managers / nominated school administrators to ensure that each check is an eligible one.
14. The CRB team will continue to work with the criminal records bureau and will comply with the CRB guidelines and regulations as part of its role as a registered body.
15. The CRB team will strive at all times to ensure that all applications are legitimate applications based on the specific CRB category codes.

Obtaining CRB disclosure checks

16. Your manager will contact the CRB team at the recruitment stage in order to agree whether a CRB disclosure check is a requirement of the role.
17. **The CRB team will provide managers with access to the new electronic ebulk system in order that the CRB check can be requested from the Criminal Records Bureau.**
18. You may not work in the role for which the CRB check is being obtained until the CRB has been received and the offer of employment is confirmed.
19. **The Government will be introducing a change to the CRB disclosure process whereby the applicant will receive the result of the CRB check**

before the council. Until this change is introduced, Wiltshire Council will continue to apply for and receive CRB checks on behalf of applicants.

Information required from the applicant

20. In order to carry out thorough CRB disclosure checks, the council will need to know any names, name changes, or aliases by which you may have been known in the past, including maiden names, assumed name of step parent, change of name by deed poll, etc. You will be required to produce originals of three documents from two specific lists, including an original copy of your birth certificate. Refer to [proof of identity requirements](#). This information is also required as part of the recruitment procedure to meet with our obligations under the Asylum Act 2002. You may be required to provide additional written evidence of proof of identity.

CRB disclosure application forms

21. Recruiting managers and school administrators are required to complete a section of the CRB disclosure application form to confirm specific details about the position for which the CRB check is required. Refer to [CRB guidance](#).
22. The council is committed to the avoidance of submitting potentially ineligible CRB applications and therefore requires recruiting managers and school administrators to provide accurate information on the application.

Regulated activities

Children:

23. Regulated activity relating to children is defined as work that a barred person must not do. It is as follows:

Category 1:

- Teaching, training, instructing, caring for or supervising children in an unsupervised capacity;
- Providing advice/guidance on well-being to children in an unsupervised capacity;
- Driving a vehicle for children only in an unsupervised capacity;
- Work for a limited range of establishments (specified places) with opportunity for contact.
- It is **work that is done** on a 'regular' basis i.e. one or more times a week or on 4 or more days **in a 30-day period**.

Category 2:

- Relevant personal care e.g. washing or dressing a child; or healthcare by or supervised by a professional, even if done only once
- Registered childminding
- Foster carers.

A CRB check is **not** required in respect of the activities in categories 1 and 2 if the person undertaking these activities:

- is supervised at a reasonable level (refer to [guidance on supervision](#)).
- is providing treatment or therapy (instead of 'health care').
- Is a supervised volunteer – supervised at a reasonable level
- Is carrying out occasional or temporary services e.g. window cleaners.
- Is an office holder e.g. governors

Adults:

24. Regulated activities relating to adults is outlined below. There is no requirement to carry out these activities a certain number of times before a person is deemed to be engaging in regulated activity with vulnerable adults:

- Work undertaken by regulated health care professional e.g. health care assistants, physiotherapists.
- Work undertaken by a person under the direction or supervision of a health care professional
- Personal care provided to an adult e.g. assistance with washing and dressing, eating, drinking and toileting or teaching someone to do these tasks
- Social work: provision by a social care worker of social work which is required in connection with any health services or social services.
- Providing assistance to an adult e.g. with a person's cash, bills or shopping because of their age, illness or disability e.g. collecting a pension
- Providing assistance with the conduct of an adult's own affairs e.g. lasting or enduring powers of attorney or deputies appointed under the Mental Health Act
- Conveying adults for reasons of age, illness or disability to, from or between places where they receive healthcare, personal care or social work.

25. Enhanced CRB disclosure checks will be required if you are working in a regulated activity and for all work in specified settings (e.g. schools, children's homes).

New employees – regulated activity

26. If you are an employee or a volunteer who will be engaged in regulated activity, the council will always require an Enhanced CRB disclosure check to be carried out before a contract of employment is issued to you.
27. You may not start work with the council in regulated activity until a CRB disclosure check has been obtained.

Disclosure of past convictions – for all roles exempted from the Rehabilitation of Offenders Act 1974

28. Where a role is exempted from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 you are required to be completely honest in disclosing all convictions throughout your entire life, from the age of criminal responsibility (10 years).
29. Where you are applying for a role which is exempted from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, no conviction will ever be considered spent and you must declare it.
30. You should be aware that if you have accepted a caution, warning or reprimand from the Police then these must be declared as relevant offences.

The employment of ex-offenders

31. Wiltshire Council is committed to equality of opportunity and recognises its responsibilities under the [rehabilitation of offenders at work act](#). Unlawful treatment of ex-offenders, i.e. failure to employ an ex-offender without lawful justification, where this cannot be justified by the nature of the work, will not be tolerated. Refer to the [recruitment of ex-offenders policy](#).
32. The council is committed to the rehabilitation of ex-offenders. There are many offences which may not disqualify an applicant from employment where:
 - the convictions are of a less serious nature; and/or
 - were committed some time ago; and/or
 - were committed when the applicant was a juvenile/young person; and/or

- there were extenuating circumstances; and/or
 - there have been no further offences.
33. In some cases, consideration of offences will take specific account of the nature of the post you are applying for.
34. If you are applying for a role in regulated activity or specified settings you are required to disclose all offences and failure to do so may unfavourably affect consideration of your suitability to work with children or vulnerable adults.

Barred lists

35. The Adults Barred List and the ISA Children's Barred List are administered by the Vetting and Barring Scheme (VBS). The council will continue to work with the VBS to check your details against the names of individuals appearing on these lists **where the role is regulated activity**.
36. You are required to declare if you are barred from working in any roles.
37. There are some offences which may result in you having been made subject of a Disqualification Order (DO). It is an offence for you to apply for a post that is restricted under the (DO) and, should you be subject to a DO and apply for a restricted post, Wiltshire Council will report you to the police.
38. If you have been convicted of an offence under Schedule 1 of the Children and Young Persons Act 1933 (as amended by subsequent legislation) you will not be eligible to apply for a restricted post.
39. You will never be allowed to carry out any form of regulated activity if you have been barred from carrying out a restricted post.
40. If you are barred from working in regulated activity with either children or vulnerable adults you must not work, or seek to work, in regulated activity with that group. You may apply and be considered for any suitable employment elsewhere in the Council.

CRB rechecks

41. For some roles requiring a CRB check, a re-check must also be carried out every three years to ensure Wiltshire Council remains compliant with regulatory requirements and to support inspection protocols.
42. If you work in any of the following areas or roles, you will be required to undertake a new CRB disclosure check every three years:
- fostering and adoption teams

- looked after children residential teams
 - staff with the legal designation of 'social worker' who are registered [with the Health and Care Professions Council \(HCPC, formerly the General Social Care Council\)](#)
 - [special educational needs \(SEN\) and inclusion/impairment services](#)
 - youth offending teams
 - youth and community workers
 - [personal advisors \(ex-Connexions\)](#)
 - children's disability and special educational needs (SEN) services
 - youth offending teams
 - care workers (adult)
 - Connexions
 - taxi drivers providing services for the council in regulated activity
43. If you are the manager of the above staff groups, you must actively monitor the renewal date of CRB disclosures for these employees and must initiate the CRB re-check process every three years.
44. You will be required to complete the necessary forms and agree to checks being carried out if your role requires a CRB disclosure recheck. This will include checks against the barred lists. Failure to comply with this requirement may result in disciplinary action being taken and could lead to termination of your contract.

Handling of CRB data

Secure storage and handling of data

45. Any information provided by the CRB as part of a CRB disclosure will be securely stored and handled and the content will be confidential to the council staff authorised to fulfil this role. Refer to the policy on the [storage of disclosure information](#).
46. The council does, however, reserve the right to advise other relevant organisations, having a statutory or another legitimate interest, as to the suitability of certain applicants for positions in regulated activity or specified settings. Refer to working together to [safeguarding children - a guide to interagency working to safeguarding and promoting the welfare of children](#).
47. The council will observe the [CRB code of practice](#) including the opportunity for you to appeal to the CRB about the disclosure information provided.

Policy Issues

The code of conduct

48. The council has a code of conduct policy which applies to all staff. Refer to [code of conduct policy](#). The policy informs you about some of the statutory, national and local obligations which will govern your conduct as a local government employee.
49. All council employees are expected to abide by the code of conduct policy and to ensure that all of their activities whilst employed by the council are carried out with honest, integrity and professionalism.

The disciplinary policy

50. If you do not comply with the terms of this CRB disclosures policy and should you behave in a way which is felt to be dishonest in respect of this policy or which brings the council's reputation into question, you may be subject to the council's [disciplinary policy](#). This could result in your dismissal from employment with the council.

Allegations against staff

51. Should an allegation be made against you in respect of your role working with children or certain adults, this will be dealt with under the council's disciplinary policy. Refer also to the council's procedure for [managing allegations against people who work with children](#).

New Offences for existing employees

52. You are required as part of your contract of employment to inform your manager of any police investigation, charge, caution, reprimand, fine or conviction against you immediately. All such disclosures will be handled in confidence but if you are employed in a 'notifiable occupation', a 'regulated activity' or a 'specified setting' this may result in your suspension from duties while an investigation takes place. Refer to the [disciplinary policy](#).

Roles and responsibilities

Applicant and employee responsibilities

53. To be completely honest in declaring all convictions before employment.
54. To be completely honest in declaring subsequent convictions after having been employed.
55. To provide such information as is requested in order for a CRB disclosure check to be carried out.

Line manager responsibilities

56. To undertake a CRB risk assessment on the responsibilities and duties, whether a CRB check is required for a new role.
57. To ensure that the need for a CRB check is recorded on the Job Evaluation Questionnaire (JEQ) and job description for the role when the JEQ for a new role is submitted for evaluation or re-evaluation.
57. To seek advice from an HR case adviser if you are unsure whether a CRB check is in fact necessary for a new role.
58. To be responsible for following up re-checks (where required) after three years have elapsed since the last CRB disclosure was carried out, with the CRB team.
59. When information is received regarding a candidate's offending background, to confirm with an HR Operations Manager whether the information is relevant to the role being applied for.
60. Not to make a decision not to employ a candidate on the basis of a CRB check outcome without first discussing this with the candidate and an HR case adviser or HR Operations Manager.
61. Not to unfairly discriminate against an applicant with a criminal record.
62. To assess whether safeguarding training is required for employees or volunteers and ensure they attend such training and any refresher courses.
63. To undertake safeguarding training themselves and any refresher courses.

HR CRB team responsibilities

62. To undertake all safer recruitment reference checking including CRB checks.
63. To raise issues of non-compliance with this policy with the Service Director, HR & OD.

Recruitment team responsibilities

64. To confirm on all recruitment materials relevant to a role whether it is exempt from the Rehabilitation of Offenders Act (under the Rehabilitation of Offenders Act (Exceptions) Order 1975), whether it is a regulated activity and that an Enhanced CRB disclosure will be required for the successful candidate.

- 65. To undertake all safer recruitment reference checking including CRB checks.
- 66. To raise issues of non-compliance with this policy with the Service Director, HR & OD and the relevant HR case adviser for that service area.

HR case adviser responsibilities

- 67. To provide specialist sector advice and guidance on the application and interpretation of this policy.
- 68. Where a recruiting manager is unclear whether a CRB check is required for a new or vacant role, to check the eligible positions guide codes and provide appropriate advice.

Frequently asked questions

68. I have a spent conviction. Am I required to declare this at the interview stage?

Only if the job you are applying for is exempt from the rehabilitation of offenders act 1974 (under the rehabilitation of offenders act 1974 (Exceptions) Order 1975) and the role requires a CRB Disclosure Check.

69. Whose responsibility is it to carry out the CRB disclosure check?

The recruiting manager is responsible for all safer recruitment relating to their staff and must inform the CRB team if a CRB disclosure is required for a role being advertised. The CRB team will work **with the manager** and with the Criminal Records Bureau to carry out all checks.

70. I have a number of employees whose CRB re-checks are shortly due for renewal. What should I do?

You must contact the CRB team in plenty of time in advance of the expiry of the old CRB disclosure, in order that new checks may be carried out.

71. Does the law require CRB checks for school staff employed before 2002 if they have not changed jobs and there are no concerns?

No. Current regulation does not require, and guidance does not recommend, CRB checks on those recruited before March 2002 and who have continuity of service. The law only requires all longer service employees who work with children to have been checked against the barred lists.

72. An Ofsted inspector has told me that I need to do three-yearly re-checks on staff in my school. Is this correct?

No, due to specific exemptions from the Secretary of State for Education the need for CRB re-checks never applied in relation to regular school staff, although some local authorities do choose to carry out regular re-checks in their schools. The law only requires CRB checks for schools staff at the recruitment stage, and only then if the person has a break in service of more than three months.

73. An individual has a recent CRB disclosure and has come directly from another local authority with no break in service. Do they need another clearance done?

Yes. At present under the Wiltshire Council CRB Policy anyone coming from another local authority will need a new CRB disclosure clearance as all individuals new to Wiltshire need a CRB clearance through Wiltshire Council as a Registered Body.

74. What evidence is a school required to demonstrate during an OFSTED inspection that CRB checks on staff have been carried out?

Schools need to keep a Single Central Record of all the pre-employment checks on staff and checks on volunteers showing their CRB disclosure numbers plus the date of the disclosure. An enhanced CRB will either include children's or adult's barred list checks as appropriate to the role. If the employee's employment with the school is pre 2002 then a copy of the previous List 99 and local police check evidence should be recorded and retained. In addition the school needs to record all the other usual pre-employment checks on their SCR. More guidance is available on **Schools HR Online**

75. A new employee is about to start work but has been overseas in a role with the armed forces as civilian staff. Can a CRB check be obtained?

Yes. All services personnel are subject at all times to the Service Discipline Acts (SDA), as are their families and UK based civilians (UKBC) when based or employed overseas.

All convictions under the Military Criminal Justice System for recordable offences committed by service personnel (in the UK and overseas) or civilians subject to the Service Discipline Acts (overseas only) are recorded on the UK Civilian Police National Computer (PNC) and are available to the CRB as part of their routine checks.

In addition, the Criminal Records Bureau has access to information held at the Service Police Crime Bureau (SPCB) in relation to serving or former members of the Armed Forces.

76. What legislation or guidelines are employees required to abide by when working with children or vulnerable adults?

You should refer to – [AMA guidance for Safer Working Practice for Adults who work with Children and Young People](#).

You should also refer to the [guidance for managers on safer recruitment](#).

77. I have been accepted as a volunteer worker in a primary school because they accepted my explanation about offences I committed as a teenager which were confirmed on my CRB check. Does this mean I am now clear to work anywhere in Wiltshire schools?

No, as part of the positive CRB risk assessment carried out in response to your confirmed offending history the head teacher has identified the risks of allowing you to work with children but has also assessed the school's capacity to offset those risks with additional safeguards. Another school may not be able to put those same safeguards in place and therefore may make a different decision. This means your clearance to volunteer at this school does not extend to all schools so you should declare your offending history to any other school you might want to do voluntary work for.

78. I have been told that although I am a qualified social worker I cannot be considered for a social care role with the council because of a police caution I accepted 5 years ago. This can't be correct as it was a minor offence and I declared it on my application form.

Yes it is correct for most social worker roles where appearance in court proceedings is required. If you have an offending history then your professional standing can be compromised under cross examination. This will then cast doubt over your judgement and recommendations in the case being considered. Having committed certain offences will unfortunately mean you cannot be appointed to such positions. You could however be considered for other roles where court appearances are not part of the duties.

Equal opportunities

Managers will make any necessary adjustments to ensure that all employees are treated fairly within the law.

Legislation

- [safeguarding vulnerable groups act 2006](#)
- [police act 1997](#)
- [protection of freedoms bill 2011](#)
- [rehabilitation of offenders act 1974](#)
- [rehabilitation of offenders \(exceptions\) order 1975](#)
- [section 142 of the education act 2002](#)

- [section 15 of the teaching and higher education act 1998](#)
- [section 6 of the protection of children act 1999](#)
- [sections 35 and 36 of the criminal justice and court services act 2000](#)
- [data protection act 1998](#)
- [education \(school teachers qualifications\) \(England\) regulations 2003](#)
- [education \(specified work and registration\)\(England\) regulations 2003](#)
- [education \(prohibition from teaching or working with children\) regulations 2003](#)
- [school staffing \(england\) regulations 2009](#)
- Protection of Freedoms Act 2012

This policy has been reviewed by an internal legal organisation to ensure compliance with the above legislation and our statutory duties.

Further information

There are a number of related policies and procedures that you should be aware of including as well as several guidelines. There is also a [toolkit](#) including manager guidance and supporting documents to use when following this policy and procedure.

- [recruitment of ex-offenders](#)
- [code of conduct](#)
- [disciplinary](#)
- [storage of disclosure information](#)
- [volunteers](#)
- [safeguarding vulnerable adults in Swindon and Wiltshire.](#)

Guidelines:

- [guidance for managers - safer recruitment](#)
- [CRBs - frequently asked questions](#)
- [AMA guidance for safer working practice for adults who work with children and young people](#)
- [UK border agency](#)
- [CRB code of practice](#)
- [General Social Care Council](#)
- [working together to safeguard children](#)
- [procedure for managing allegations against people who work with children](#)
- [the schools HR website](#)
- [CRB website](#)
- [Guidance on supervision](#)

Advice and guidance

If you require help in accessing or understanding this policy or completing any of the associated forms you should contact either the [CRB Team](#), or the recruiting manager.

If, due to the nature of your query, it is not appropriate to contact your line manager you should contact your head of service who will nominate an appropriate manager or colleague to help you.