

DRAFT VERSION 3

Wiltshire Council Human Resources

Criminal Record 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 This policy is transitional until some provisions of the Safeguarding Vulnerable Groups Act 2006 are repealed by the Protection of Freedoms Bill in November 2011 and the changes are confirmed as new regulation from early 2012.

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.

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There is also a [toolkit](#) of documents including guidance notes available.

Who does it apply to?

This policy applies to anyone applying for or working in roles providing services relating to children and vulnerable adults. It therefore applies to job applicants current employees and any other individuals, including those working in schools.

When does it apply?

It applies to all prospective employees and workers who are engaged in 'regulated activity' and includes those specific roles where CRB disclosure checks are a requirement of professional registration or formal inspection. For all roles requiring a CRB check, a re-check must be carried out every three years.

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 – [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 if they receive:
 - 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.
12. 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

13. The [CRB team](#) will ensure each individual application is eligible for a CRB disclosure check, first checking that:

- the position applied for is in a 'regulated activity';
 - it has a specific category code under which the position is eligible for CRB check;
 - an explanation can be given as to why this category code applies to the position in question.
14. The [CRB team](#) may need to verify information with recruiting managers / nominated school administrators to ensure that each check is an eligible one.
15. 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.
16. The [CRB team](#) will strive at all times to ensure that all applications are legitimate applications based on the specific CRB category codes. Refer to [DACC codes](#).

Obtaining CRB disclosure checks

17. 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.
18. You should be aware that it may take several weeks to obtain a CRB check and that you may not normally work in the role for which the CRB check is being obtained, until it is received and the offer of employment is confirmed.

Information required from the applicant

19. 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](#).
20. 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

23. Regulated activity relating to children is defined as:
- specified activities such as teaching, instructing, supervising, caring for or providing children/vulnerable adults with guidance or treatment on a frequent, intensive or overnight basis;
 - fostering and childcare services;
 - specified positions such as school governor or director of children's or adult social services;
 - all activity undertaken within specified settings where there is the opportunity for contact with children or vulnerable adults. Such activities include teaching, training and instruction, as well as catering, cleaning, administrative and maintenance workers or contractors;
 - roles that involve managing or supervising, on a regular basis, the day-to-day work of those carrying out specified activities or working in specified settings.
24. Regulated activities relating to vulnerable adults is defined as:
- certain types of activity carried out frequently, on four or more days in a 30-day period, or overnight. This includes teaching, training, advising, and caring for vulnerable adults;
 - any activity carried out frequently, or on four or more days in a 30-day period in a care home which gives an employee the opportunity to have contact with vulnerable adults as a result of his duties or anything they are allowed to do there;
 - the day-to-day management or supervision on a regular basis of any person carrying out the activities mentioned above;
 - the director of adult social services or a trustee of vulnerable adults' charity.
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.
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. Certain roles will continue to be subject to CRB rechecking 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 [General Social Care Council](#).
 - children's disability and special educational needs (SEN) services
 - youth offending teams

- care workers (adult)
 - Connexions
 - taxi drivers providing services for the council.
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 safeguard children – a guide to inter-agency working to safeguard and promote 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 honesty, 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 vulnerable 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 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 confirm to an HR advisor, following the application of a CRB risk assessment on the responsibilities and duties, whether a CRB check is required for a new role.
57. To seek advice from an HR advisor 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 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 Business Partner 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 advisor or HR business partner.
61. Not to unfairly discriminate against an applicant with a criminal record.

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 HR Director.

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 HR Director.

HR advisor responsibilities

67. To provide specialist sector advice and guidance on the application and interpretation of this policy.

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 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. 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 and governors showing their

CRB disclosure numbers plus the date of the disclosure. (An enhanced CRB will include List 99, POVA, and POCA checks). If the employee's employment with the school is pre 2002 then a copy of the 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](#).

Definitions

Regulated activity

Specific activity in specific settings when working with children or vulnerable adults.

CRB check

A check into the background of an applicant or an employee by the Criminal Records Bureau to check the status of past convictions or offences which is then used to assess the candidate's suitability for the position applied for.

Barred lists

The Adults Barred List and the Children's Barred List (including List 99) upon which people with certain convictions appear.

Equal opportunities

This policy has been [Equality Impact Assessed](#) to identify opportunities to promote equality and mitigate any negative or adverse impacts on particular groups.

Managers will make any necessary adjustments to ensure that all employees are treated fairly within the law. For further information see the [guidance on equal opportunities in CRB disclosures](#).

Legislation

- [safeguarding vulnerable groups act 2006](#)
- [police act 1997](#)
- [protection of freedoms bill 2011](#)
- [the rehabilitation of offenders act 1974](#)
- [the 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](#)
- [the education \(prohibition from teaching or working with children\) regulations 2003, as amended](#)

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

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.

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.

Toolkit

Policies:

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

Guidelines:

- [managers guide - safer recruitment](#)
- [CRBs – frequently asked questions](#)
- [managers guide - confidential handling and assessment of positive CRB disclosures](#)
- [AMA guidance for Safer Working Practice for Adults who work with Children and Young People](#)
- [form - DACC codes](#)
- [UK Border Agency identity guidance](#)
- [CRB guidance](#)
- [CRB Code of Practice](#)
- [General Social Care Council](#)
- [proof of identity requirements](#)
- [working together to safeguard children – a guide to inter-agency working to safeguard and promote the welfare of children](#)
- [procedure for managing allegations against people who work with children](#)
- [the schools HR website](#)
- [CRB website](#)

For further information please speak to your supervisor, manager, service director or contact an HR advisor.

Policy author	HR Policy and Reward Team - MCL
Policy implemented	DRAFT 3 – Version sent to JCC and Staffing Policy

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