**Model Form 2: Form for requesting information about criminal convictions**

|  |
| --- |
| Version 3 |
| Published November 2020 |

When to use this form

This template form should only be used to request information from candidates about criminal convictions, **if there is a lawful reason to request information about both spent and unspent criminal convictions.**

You should only seek information from candidates which is required in relation to the type of work that they are registering with you for. Note in particular that in order to comply with data protection laws you must only process information which is necessary.

Candidates are not required to disclose information about convictions which are spent unless they are specifically registering for work which is exempt from the **Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (2013 and 2020)**.

If you operate in a sector which routinely places candidates/supplies candidates into roles which are exempt from the Rehabilitation of Offenders Act, meaning that candidates can be asked to disclose both spent and unspent convictions, you can ask them to complete this form.

If the candidate is not seeking work in roles that are exempt from the Rehabilitation of Offenders Act you can use section three of the [registration form (model form 1).](https://www.rec.uk.com/legal-resources/legal-news/updated-gdpr-model-forms)

Candidates are not required to disclose information about protected offences (offences which are subject to the filtering rules which was updated in November 2020 to include additional convictions and cautions).

Changes made in May 2018

This form has been updated to reflect changes in existing data protection legislation with the enforcement of the General Data Protection Regulation (GDPR) on 25 May 2018. Although information relating to criminal convictions constitutes sensitive personal data for the purposes of the Data Protection Act 1998, they are not defined as ‘special categories of data’ in the General Data Protection Regulation (GDPR).  However the Government announced in September 2017 that they would continue to be sensitive personal data for the purposes of a new data protection bill (which is being brought into force to deal with some of the GDPR derogations and to ensure the GDPR standards are incorporated into UK law post-Brexit). At the time of writing, this bill is still working its way through Parliament – nonetheless we recommend that members continue to treat criminal records as sensitive personal data until such time as they hear otherwise. [See Note 4]

[Insert REC member logo]

**Note to candidates:**

Before completing this section please read our policy regarding candidates with criminal convictions. [See Note 1]

This form must be completed by candidates seeking work in roles which are exempt from the Rehabilitation of Offenders Act 1974. For this reason **you are required to disclose information about both spent and unspent convictions.**  If you do not wish to be put forward for roles which are exempt from the **Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (2013 and 2020)** you are not required to complete this form. Please ask for the general registration form.

**You are not required to declare any** **information about ‘protected’ offences** (offences to which the filtering rules apply). If you require further information about convictions which are **unspent/spent or protected** please see the additional guidance sheet attached to this form or you can contact organisations such as [NACRO](https://www.nacro.org.uk/) or [Unlock](http://www.unlock.org.uk/) for further assistance.

| **Information required** | **Details** |
| --- | --- |
| Do you have any convictions or cautions (excluding youth cautions, reprimands or warnings) that are not ‘protected’ as defined by the [Ministry of Justice](https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974)? | Yes / no |
| Option A: If yes, please provide the offence dates, dates of conviction/caution, offence types and sentences below. [See Note 2]  Option B: If you have answered ‘Yes’, there are two ways of providing further details.  (a) Provide the offence dates, dates of conviction/caution, offence types and sentences received below; or  (b) Provide further details (as above) on a separate document by placing a tick here [ ] and attaching the details in an envelope attached to this completed form. [See Note 3]  **The amendments to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (2013 and 2020) provides that when applying for certain jobs and activities, certain convictions and cautions are considered ‘protected’. You are not required to provide any information about protected (filtered) offences. This means that they do not need to be disclosed to employers, and if they are disclosed, employers cannot take them into account.** |  |

If you have declared any convictions you are welcome to provide us with any additional information that you think may be relevant and which will help us to determine your suitability to be put forward for roles with our clients. This could include for example information about the circumstances of the offence, any work (paid or voluntary) or training that you have undertaken since, change in your circumstances etc.

We will seek to put forward/supply the best possible candidates to our clients. Having a criminal conviction will not necessarily exclude you from the process.

Failure to declare a conviction may require us to exclude you from our register if the offence is not declared but later comes to light. If you are working in an assignment with a client at the time that we are made aware of a conviction that have not disclosed to us, we may be legally required to inform our client of that information and your assignment may be terminated.

# Data Protection Statement [see Notes 4 to 15]

[Insert agency name] provides work-finding services to its clients and work-seekers. We must process personal data (including sensitive personal data) so that we can provide these services – in doing so, we act as a data controller. This is why we have asked for your personal data on this form. When we process your personal data we must do so in accordance with data protection laws. Those laws require us to give you a Privacy Statement to explain how we manage your personal data. [Please see our Privacy Statement in Annex A OR Please see the Privacy Statement which we will give to you separately.]

APPENDIX 1: REHABILITATION PERIODS

Note: Sentences of imprisonment of more than 48 months can never be spent.

|  |  |  |
| --- | --- | --- |
| **Sentence** | Rehabilitation period for adult offenders | Rehabilitation period for young offenders under the age of 18 |
| **Imprisonment of more than 30 months and up to or consisting of 48 months** | 7 years from the date the sentence is completed | 42 months from the date the sentence is completed |
| **Imprisonment of more than 6 months and up to or consisting of 30 months** | 48 months from the date the sentence is completed | 24 months from the date the sentence is completed |
| **Imprisonment for 6 months or less** | 24 months from the date the sentence is completed | 18 months from the date the sentence is completed |
| **Dismissal from HM's Service** | 12 months from the date of conviction | 6 months from the date of conviction |
| **Detention** | 12 months from the date the sentence is completed | 6 months from the date the sentence is completed |
| **Fine** | 12 months from the date of conviction | 6 months from the date of conviction |
| **Compensation order** | The date on which the payment is made in full | The date on which the payment is made in full |
| **Community or youth rehabilitation order** | 12 months from the date provided for by or under the order | 6 months from the date provided for by or under the order |
| **A relevant order** | The date provided for by or under the order | The date provided for by or under the order |

APPENDIX 2: DBS eligibility guidance

*The following text is provided by the Disclosure and Barring Service (DBS) copied here under the* [*Open Government Licence*](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/2/)

DBS checks: eligibility guidance

Under the **Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (2013 and 2020)**, a person with a criminal record is not required to disclose any spent convictions unless the position they are applying for, or are currently undertaking, is listed as an exception under the act.

Your Legal Responsibility

Before an organisation considers asking a person to make an application for a Disclosure and Barring Service (DBS) check, they are legally responsible for ensuring that they are entitled to ask that person to reveal their conviction history.

The information below includes the amendments introduced as a result of the Protection of Freedoms Act 2012 and describes occupations that are known as the exceptions to the **Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (2013 and 2020)**. This is not an exhaustive list as some roles included in the list of exceptions obtain conviction information via other means.

The Ministry of Justice has stated that organisations should not insist that a DBS check forms part of a recruitment exercise or bid when tendering for contracts, unless the services provided meet the criteria for an eligible DBS check as defined by the exceptions, as this would breach employment law.

**Standard checks –** To be eligible for a standard level DBS check the position **must** be included in the **Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (2013 and 2020)**.

**Enhanced checks –** To be eligible for an enhanced level DBS check, the position **must** be included in both the ROA Exceptions Order **and** in Police Act Regulations.

**Enhanced checks with children’s and/or adults’ barred list check(s)** – To be eligible to request a check of the children’s or adults’ barred lists, the position must meet the new definition of regulated activity. There are a small number of other positions for which you can also request list checks.

Using the reference numbers

The reference numbers in the tables below are used by DBS as a reference point only for dealing with enquiries about DBS check eligibility. If you are contacted to confirm eligibility for a position you must provide full details of the job role and explain how the relevant legislation supports the application for a DBS check. It is not sufficient to provide a reference number without supporting evidence.

**Please note, as a result of the changes introduced in September 2012, by the Protection of Freedoms Act 2012, the reference numbers have changed significantly.**

Where to find further guidance

If you are unsure about whether a position is eligible for a DBS check you should refer to any guidance provided for the job sector, consider obtaining legal advice on the requirements to obtain criminal records checks.

You can also contact the DBS for further advice via email at [customerservices@dbs.gsi.gov.uk](mailto:customerservices@dbs.gsi.gov.uk); please include the job specification and the roles and duties of the position.

|  |  |
| --- | --- |
| **Positions eligible for DBS checks taken from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975** | **Ref No** |
| Any work which is currently defined as regulated activity relating to children within the meaning of Schedule 4 Part 1 of the Safeguarding Vulnerable Groups Act 2006. | 01(a) |
| Any work which was defined as regulated activity relating to children within the meaning of Schedule 4 Part 1 of the Safeguarding Vulnerable Groups Act 2006 before the coming into force of section 64 of the Protection of Freedoms Act 2012 on 10th September 2012. | 01(b) |
| Any work which is currently defined as regulated activity relating to adults within the meaning of Schedule 4 Part 2 of the Safeguarding Vulnerable Groups Act 2006. | 02(a) |
| Any work which was defined as regulated activity relating to vulnerable adults within the meaning of Schedule 4 Part 2 of the Safeguarding Vulnerable Groups Act before the coming into force of sections 65 and 66 of the Protection of Freedoms Act 2012 on 10th September 2012. | 02(b) |
| Any office or employment which is concerned with:  a) the provision of care services to vulnerable adults.  b) the representation of, or advocacy services for, vulnerable adults by a service that has been approved by the Secretary of State or created under any enactment; and which is of such a kind as to enable a person, in the course of his normal duties, to have access to vulnerable adults in receipt of such services. | 03 |
| Any work in a regulated position within the meaning of Part 2 of the Criminal Justice & Court Services Act 2000. This does not include those working with 16/17 year olds on work experience. | 04 |
| Any work in a further education institution or 16 to 19 Academy where the normal duties of that work involve regular contact with children. | 05 |
| Any position which otherwise involves regularly caring for, training, supervising or being solely in charge of children. | 06 |
| Any position which otherwise involves regularly caring for, training, supervising or being solely in charge of vulnerable adults within the meaning of section 59 of the Safeguarding Vulnerable Groups Act 2006 as it had effect immediately before the coming into force of section 65 of the Protection of Freedoms Act 2012. | 07 |

|  |  |
| --- | --- |
| **Professions eligible for DBS checks taken from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975** | **Ref No** |
| Healthcare Professional – A person who is regulated by a body mentioned in subsection (3) of section 25 of the National Health Service Reform and Health Care Professions Act 2002. | 08 |
| Barrister (in England and Wales), solicitor. | 09 |
| Chartered accountant, certified accountant. | 10 |

|  |  |
| --- | --- |
| **Professions eligible for DBS checks taken from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975** | **Ref No** |
| Veterinary surgeon | 11 |
| Actuary | 12 |
| Registered foreign lawyer | 13 |
| Legal executive | 14 |
| Receiver appointed by the Court of Protection | 15 |

|  |  |
| --- | --- |
| **Offices, employments and works eligible for DBS checks taken from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975** | **Ref No** |
| Judicial appointment | 16 |
| The Director of Public Prosecutions and any office or employment in the Crown Prosecution Service. | 17 |
| Designated officers for:   * magistrates’ courts * justices of the peace * local justice areas * justices’ clerks * assistants to justices’ clerks | 18 |
| Clerks (including deputy and assistant clerks) and officers of the High Court of Justiciary, the Court of Session and the district court, Sheriff’s clerks (including sheriff’s clerks’ deputy) and their clerks and assistants. | 19 |
| Police constables or persons appointed as police cadets and persons employed for the purposes of assisting constables of a Police Force established under any enactment; naval, military and air force police. | 20 |
| Any employment within the precincts of:   * a prison * a remand centre * a removal centre * a short term holding facility * a detention centre * a Borstal institution * a young offenders institution * members of boards of visitors (England & Wales) | 21 |
| Traffic wardens | 23 |
| Probation officers | 24 |
| Any employment or other work which is concerned with the provision of health services and which is of such a kind as to enable the holder of that employment or the person engaged in that work to have access to persons in receipt of such services in the course of his normal duties. | 25 |
| Financial Services position – This means all positions for which the Financial Services 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. | 26 |
| Those working within an Authorised Payment Institution as:   * Directors and managers | 27 |

|  |  |
| --- | --- |
| **Offices, employments and works eligible for DBS checks taken from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975** | **Ref No** |
| * Holders of qualifying holdings * Controllers of the Authorised Payment Institution | |
| Any occupation which is:   * concerned with the management of a place in respect of which the approval of the Secretary of State is required by section 1 of the Abortion Act 1967; or, * carrying on a nursing home in England and Wales in respect of which registration is required by Section 187 of the Public Health Act 1936 or Section 14 of the Mental Health Act. | 28 |
| Any employment in the Royal Society for the Prevention of Cruelty to Animals (the RSPCA) where the person employed or working, as part of his duties, may carry out humane killing of animals. | 29 |
| Any office or employment in the Serious Fraud Office. | 30 |
| Any office or employment in the Serious Organised Crime Agency (SOCA). | 31 |
| * The Commissioners for Her Majesty’s Revenue and Customs and any office or employment in their services * The Director and any office or employment in the Revenue and Customs Prosecutions Office | 32 |
| Any employment which is concerned with the monitoring, for the purposes of child protection, of communications by means of the internet. | 33 |
| An individual designated under section 2 of the Traffic Management Act 2004. | 34 |
| Court Positions:   * Judges’ clerks, secretaries and legal secretaries within the meaning of section 98 of the Supreme Court Act 1981(c) * Court officers and court contractors who, in the course of their work, have face to face contact with judges of the Supreme Court, or access to such judges’ lodgings * Persons who in the course of their work have regular access to personal information relating to an identified or identifiable member of the judiciary * Court officers and court contractors who, in the course of their work, attend either the Royal Courts of Justice or the Central Criminal Court * Court security officers and tribunal security officers * Court contractors who, in the course of their work, have unsupervised access to court-houses, offices and other accommodation used in relation to the courts * Contractors, sub-contractors, and any person acting under the authority of such a contractor or sub-contractor, who, in the course of their work, have unsupervised access to tribunal buildings, offices and other accommodation used in relation to tribunals   The following persons:  a) Court officers who execute county court warrants  b) High Court enforcement officers  c) Sheriffs and under-sheriffs  d) Tipstaffs  e) Any other persons who execute High Court writs or warrants who act under the authority of a person listed at (a) to (d)  f) Persons who execute writs of sequestration | 35 |

|  |  |
| --- | --- |
| g) Civilian enforcement officers as defined in section 125A of the Magistrates’ Courts Act 1980  h) Persons who are authorised to execute warrants under section 125B (1) of the Magistrates’ Courts Act 1980, and any other person (other than a constable) who is authorised to execute a warrant under section 125 (2) of the 1980 Act  i) Persons who execute clamping orders, as defined in paragraph 38(2) of Schedule 5 of the Courts Act 2003(d)   * the Official Solicitor and his deputy * Persons appointed to the office of Public Trustee or deputy Public Trustee, and officers of the Public Trustee * Court officers and court contractors who exercise functions in connection with the administration and management of funds in court, including the deposit, payment, delivery and transfer in, into and out of any court of funds in court, and regulating the evidence of such deposit, payment, delivery or transfer, and court officers and court contractors who receive payment in pursuance of a conviction or order of a magistrates' court | |
| People working in the Department for Education or the Office for Standards in Education, Children’s Services and Skills (Ofsted) with access to sensitive or personal information about children. | 36 |
| A regulated immigration adviser who provides immigration advice or immigration services under Section 82(1) of the Immigration & Asylum Act 1999(a). This also applies to persons who can act on behalf of and under the supervision of such a registered person. | 37 |
| Staff working within the Office of the Public Guardian with access to data relating to children and vulnerable adults | 38 |
| The Commissioners for the Gambling Commission and any office or employment in their service. | 39 |

|  |  |
| --- | --- |
| **Other activities eligible for DBS checks taken from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975** | **Ref No** |
| A person living at the premises where a childminding or day care service is provided or who regularly works on the premises at a time when the childminding takes place | 40 |
| A person living in the same household as a person whose suitability is being assessed for a position working with children and who lives on the same premises where their work with children would normally take place | 41 |
| Any employment or other work where the normal duties  a) involve caring for, training, supervising, or being solely in charge of persons aged under 18 serving in the naval, military or air forces of the crown; or  b) include supervising or managing a person employed or working in a capacity referred to in paragraph (a). | 42 |
| For adoption purposes | 43 |
| For foster caring purposes | 44 |
| Individuals seeking authorisation from the Secretary Of State for the Home Department to become authorised search officers. | 45 |

|  |  |
| --- | --- |
| **Other activities eligible for DBS checks taken from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975** | **Ref No** |
| For the award of public works contracts, public supply contracts and public service contracts in accordance with Directive 2004/17/EC and 2004/18/EC of the European Parliament and of the Council of March 2004(a). | 46 |
| Football Stewards, supervisors or managers of football stewards. | 47 |
| Approved Legal Services Body Manager | 48 |
| Those working for Alternative Business Structures as:   * Head of Finance and Administration of a licensed body approved under schedule 11 of the Legal Services Act 2007 * Head of Legal Practice of a licensed body approved under schedule 11 of the Legal Services Act 2007 * Owners of a licensed body approved under schedule 13 of the Legal Services Act 2007 | 49 |
| The Commissioner for Older People in Wales, his deputy and any people appointed by the Commissioner, to assist him in the discharge of his functions or authorised to discharge his functions on his behalf. | 50 |
| Any employment or other work which is normally carried out in premises approved under section 9 of the Criminal Justice and Court Services Act 2000. | 51 |
| Any person who has applied to be granted membership of the Master Locksmiths Association. | 52 |
| For National Lottery licensing purposes. | 53 |

|  |  |
| --- | --- |
| **Licences eligible for DBS checks taken from the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975** | **Ref No** |
| For the purpose of licensing hackney carriages or private hire vehicle drivers (Taxi driver licences). | 54 |
| For licences issued under Section 25 of the Children & Young Persons Act 1933 (This relates to persons under the age of 18 travelling abroad for the purpose of performing or being exhibited for profit). | 55 |
| For the purpose of licensing under Section 8 of the Private Security Industry Act 2001. | 56 |
| Any person or body required to obtain or retain a licence under regulation 5 of the Misuse of Drugs Regulations 2001 (a) or under article 3(2) of Regulation 2004/273/EC (b) or under article 6(1) of Regulations 2005/111/EC(c). | 57 |
| Police and Crime Commissioners. | 58 |

APPENDIX 3: DBS GUIDANCE: Filtering rules for criminal record check certificates

*The ‘Filtering rules for criminal record check certificates’ document is produced by the Disclosure and Barring Service. It is copied here under the* [*Open Government Licence*](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/2/)



**Filtering rules for criminal record check certificates**

**When did the law change in relation to what is disclosed on Standard and Enhanced certificate?**

Filtering rules were first introduced on 29 May 2013 when amendments were made to legislation that affected both what an employer can ask an individual in relation to convictions and cautions (for example a self-declaration on an application form of ‘do you have any convictions’), and what is disclosed on a Standard or Enhanced DBS certificate.

These rules were updated on 28th November 2020 as follows:

* warnings, reprimands and youth cautions will no longer be automatically disclosed on a DBS certificate
* the multiple conviction rule has been removed, meaning that if an individual has more than one conviction, regardless of offence type or time passed, each conviction will be considered against the remaining rules individually, rather than all being automatically disclosed.

**For those 18 or over at the time of the offence:**

An adult conviction will be removed from a DBS criminal record certificate if:

* 11 years have elapsed since the date of conviction; and
* it is the person’s only offence, and
* it did not result in a custodial sentence.

Even then, it will only be removed if it does not appear on the list of offences relevant to safeguarding. If a person has more than one offence, then details of all their convictions will always be included.

An adult caution will be removed after 6 years have elapsed since the date of the caution – and if it does not appear on the list of offences relevant to safeguarding.

**For those under 18 at the time of the offence:**

* The same rules apply as for adult convictions, except that the elapsed time period is 5.5 years
* The same rules apply as for adult cautions, except that the elapsed time period is 2 years.

ANNEX A: DATA PROTECTION

[**Delete this note from the final document:** Data controllers are required to give a privacy statement when they first collect personal data. REC has produced two standalone privacy statements – one for use when you collect the personal data directly from the work-seeker (Model Document DP5A) and the other for use when you collect the data from third party sources (model Document DP5B).

You can choose to use the privacy statement as a separate standalone document but for ease (and to serve as a reminder), we have incorporated the privacy statement in Model Document DP5A into this form (because here you are collecting personal data directly from the individual). You do not need to use a separate Document DP5A if you use the data protection statement here.]

In this Annex we explain how [Insert agency name] manages your personal data.

1. **Collection and use of personal data**
2. **Purpose of processing and legal basis** [Note 5]

[Insert agency name] will collect your personal data (which may include sensitive personal data) and will process your personal data for the purposes of providing you with work-finding services. This includes for example, contacting you about job opportunities, assessing your suitability for those opportunities, updating our databases, putting you forward for job opportunities, arranging payments to you and developing and managing our services and relationship with you and our clients.

In some cases we may be required to use your data for the purpose of investigating, reporting and detecting crime and also to comply with laws that apply to us. We may also use your information during the course of internal audits to demonstrate our compliance with certain industry standards.

The legal bases we rely upon to offer these services to you are:

* Your consent [See Note 6]
* Where we have a legitimate interest (though not applicable to sensitive personal data such as criminal records) [See Note 7]
* To comply with a legal obligation that we have
* To fulfil a contractual obligation that we have with you
* [insert any other legal basis that you rely on to process the data]

1. **Legitimate interest** [Note 7]

This is where [Insert agency name] has a legitimate reason to process your data provided it is reasonable and does not go against what you would reasonably expect from us. Where [Insert agency name] has relied on a legitimate interest to process your personal data our legitimate interests is/are as follows:

* [Set out the legitimate interest for processing the data]

1. **Recipient/s of data** [Note 8]

[Insert agency name] will process your personal data and/or sensitive personal data with the following recipients:

* [Insert the identity of the recipients/category of recipients]

1. **Statutory/contractual requirement** [See Note 9]

Your personal data is required by law and/or a contractual requirement (e.g. our client may require this personal data), and/or a requirement necessary to enter into a contract. You are obliged to provide the personal data and if you do not the consequences of failure to provide the data are:

* [set out the consequences of failure to provide the data].

1. Overseas Transfers [Optional] [See Note 10]

[Insert agency name] may transfer only the information you provide to us to countries outside the European Economic Area (‘EEA’) for the purposes of providing you with work-finding services. We will take steps to ensure adequate protections are in place to ensure the security of your information. The EEA comprises the EU member states plus Norway, Iceland and Liechtenstein.

Or

[Insert agency name] will not transfer the information you provide to us to countries outside the European Economic Area (‘EEA’) for the purposes of providing you with work-finding services. The EEA comprises the EU member states plus Norway, Iceland and Liechtenstein.

1. Data retention [See Notes 11 and 12]

[Insert agency name] will retain your personal data only for as long as is necessary for the purpose we collect it. Different laws may also require us to keep different data for different periods of time.

The Conduct of Employment Agencies and Employment Businesses Regulations 2003, require us to keep work-seeker records for at least one year from (a) the date of their creation or (b) after the date on which we last provide you with work-finding services.

We must also keep your payroll records, holiday pay, sick pay and pensions auto-enrolment records for as long as is legally required by HMRC and associated national minimum wage, social security and tax legislation.

Where [Insert agency name] has obtained your consent to process your [personal/[and] sensitive personal data/specify which personal data], we will do so in line with our retention policy [(a copy of which is attached)]. Upon expiry of that period [Insert agency name] will seek further consent from you. Where consent is not granted [Insert agency name] will cease to process your [personal data/[and] sensitive personal] data].

[Add any other retention periods for personal data/[and] sensitive personal data you have not already mentioned above].

1. Your rights [See Note 13]

Please be aware that you have the following data protection rights:

* The right to be informed about the personal data [Insert agency name] processes on you;
* The right of access to the personal data [Insert agency name] processes on you;
* The right to rectification of your personal data;
* The right to erasure of your personal data in certain circumstances;
* The right to restrict processing of your personal data;
* The right to data portability in certain circumstances;
* The right to object to the processing of your personal data that was based on a public or legitimate interest;
* The right not to be subjected to automated decision making and profiling; and
* The right to withdraw consent at any time.

Where you have consented to [Insert agency name] processing your [personal data/[and]sensitive personal data] you have the right to withdraw that consent at any time by contacting [insert the identity and contract details of the person in your organisation who handles data protection issues and, where applicable, any representative of the controller and the data protection officer]. [Note 13]

There may be circumstances where [Insert agency name] will still need to process your data for legal or official reasons. We will inform you if this is the case. Where this is the case, we will restrict the data to only what is necessary for the purpose of meeting those specific reasons.

If you believe that any of your data that [Insert agency name] processes is incorrect or incomplete, please contact us using the details above and we will take reasonable steps to check its accuracy and correct it where necessary.

**You can also contact us using the above details if you want us to restrict the type or amount of data we process for you, access your personal data or exercise any of the other rights listed above.**

1. Automated decision-making [Optional] [See Note 14]

[If your Company uses automated decision-making, including profiling, [Insert agency name] will provide meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the individual.]

1. Complaints or queries [See Note 15]

If you wish to complain about this privacy notice or any of the procedures set out in it please contact: [insert the identity and contract details of the person in [Insert agency name] who handles data protection issues and, where applicable, any representative of the controller and the data protection officer].

You also have the right to raise concerns with Information Commissioner’s Office on 0303 123 1113 or at <https://ico.org.uk/concerns/>, or any other relevant supervisory authority should your personal data be processed outside of the UK, if you believe that your data protection rights have not been adhered to.

[Choose A or B and delete the unused option:

A: I consent to [Insert agency name] processing my criminal records information for the purposes of providing work finding services to me and any legal obligations it may have to process such information.

………………………………………………………………………………………………………

Signed: ……………………………………………………

Date: …………………………………………………………

B: Use the standalone Consent Form DP6 to capture consent for all personal data you wish to process]

**NOTES – delete these notes from the terms given to the candidate**

| **Note** | **Section** | **Explanation** |
| --- | --- | --- |
|  | Criminal records | If you apply for Disclosure and Barring Service checks (criminal records) or use the DBS Update Service, you are required to have a policy in place regarding the recruitment of ex-offenders. Even if this is not the case, the REC encourages members to have such a policy in place. |
|  | Criminal records | Although clients might want to conduct criminal records checks on all applicants, candidates/ temporary workers these checks are subject to restrictions. Please see here for further detail: <https://www.rec.uk.com/legal-resources/legal-guide/criminalrecords>.  If you generally only recruit for roles that are not exempt from the **the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (2013 and 2020)** you must not request information from candidates about spent convictions. You should use form 1(Model questions and wording for registration forms) which includes a basic criminal records disclosure section in art 3. You are only entitled to ask for information about unspent convictions unless there is a particular role which is exempt from the Act. If you operate in a sector where work is routinely of the type that is exempt from the Rehabilitation of Offenders Act 1974 and this is the type of work that the candidate is seeking you can also ask the candidate to complete this form 2. This approach is in keeping with your legal obligations for Data Protection purposes in not processing excessive personal data which goes beyond a lawful basis for doing so. |
|  | Criminal records | The REC is a [Ban the Box](https://www.bitc.org.uk/programmes/ban-box/why-should-we-ban-box) employer and is also committed to actively encouraging and supporting REC members to promote inclusive recruitment. This includes taking steps to remove the barriers faced by candidates with criminal records in finding work. Many employers are also signatories of the Ban the Box campaign and look to their recruitment partners to have processes in place that support their recruitment policies.  If your procedures allow it, the preferred option to obtain information from candidates is to given the option of providing information about the conviction separately from the registration form. In which case select option B. If your processes don’t allow for this then select option A.  [NACRO](https://www.nacro.org.uk/resettlement-advice-service/support-for-employers/recruiting-safely-and-fairly-guide-a-practical-guide-to-employing-ex-offenders/) can provide further guidance for employers. |
|  | Data Protection Laws | The General Data Protection Regulation will come into effect in May 2018. The Regulation will require some significant changes to data protection processes and will introduce new or strengthen existing individual rights. For more detail see the [GDPR section](https://www.rec.uk.com/legal-resources/legal-guide/data-protection) of the REC Legal Guide.  Members should also view the [ICO Guide to the GDPR](https://ico.org.uk/media/for-organisations/guide-to-the-general-data-protection-regulation-gdpr-1-0.pdf),  [the ICO guidance on legitimate interests](https://ico.org.uk/media/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/legitimate-interests-1-0.pdf) and [the ICO interactive legal basis guidance tool.](https://ico.org.uk/for-organisations/resources-and-support/getting-ready-for-the-gdpr-resources/lawful-basis-interactive-guidance-tool/) |
|  | Purpose of processing | You must confirm why you will process the personal data and the legal basis you have for processing.  Sensitive personal data means personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the *processing* of genetic data, biometric data, data concerning health, [and] an individual’s sex life or sexual orientation [and an individual’s criminal convictions].  You should set out specifically what sensitive personal data you are processing (in this case, criminal records).  Where you intend to process sensitive personal data on the basis of consent, that consent must be explicit. REC recommends that you document explicit consent in writing. Whilst explicit consent may be verbal it is preferable to record it in writing to avoid any suggestion that the consent was not valid.  Given the additional protections required for sensitive personal data, the REC recommends that you only obtain sensitive personal data that you are legally obliged to obtain or that is relevant to the particular role you are recruiting for. This will also help you to avoid allegations of potential discrimination under the Equality Act 2010. |
|  | Consent | Consent is just one of six legal bases for processing personal data. To be valid, consent must be freely given, informed, specific and by affirmative action (i.e. not silence or pre-ticked boxes). Individuals can withdraw their consent at any time which would prevent the organisation further processing any data collected by consent. It will not always be appropriate to rely on consent and so organisations should consider if there is a more appropriate legal basis such as legitimate interests or performance of a contract.  For more detailed advice please see the [ICO guidance on consent.](https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/consent/)  If you wish to rely on consent you can either use the statement on this form or use a standalone consent form such as Model Document DP6. |
|  | Legitimate interest | Where the processing of an individual’s personal data is based on a legitimate interest then [Insert agency name] must set out the legitimate interests that they or a third party have pursued to process the data.  This can include for example:   * Managing your database and keeping work-seeker records up to date; * Contacting the individual to seek your consent where you need it; * Providing work-finding services to the individual, including sending their information to your clients where they have demonstrated an interest in doing that particular type of work but not expressly consented to you passing on their cv; * Contacting the individual with information about similar products or services that they have used from you recently; and * Passing work-seeker’s information to debt collection agencies.   Legitimate interests is quite broad and therefore flexible. However this does not mean it should be used without proper consideration and so organisations that wish to use legitimate interests should carry out a legitimate interests impact assessment.  Please note that **legitimate interests cannot be used to process sensitive personal data such as criminal records data collected on this form**.  Please see the new [ICO guidance on legitimate interests](https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/legitimate-interests/). We copy below an extract from that guidance:  ***What is the ‘legitimate interests’ basis?***  *Article 6(1)(f) gives you a lawful basis for processing where:*  *“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.”*  *This can be broken down into a three-part test:*   1. ***Purpose test:*** *are you pursuing a legitimate interest?* 2. ***Necessity test:*** *is the processing necessary for that purpose?* 3. ***Balancing test:*** *do the individual’s interests override the legitimate interest?*   A wide range of interests may be legitimate interests. They can be your own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.  The GDPR specifically mentions use of client or employee data, marketing, fraud prevention, intra-group transfers, or IT security as potential legitimate interests, but this is not an exhaustive list. It also says that you have a legitimate interest in disclosing information about possible criminal acts or security threats to the authorities.  ‘Necessary’ means that the processing must be a targeted and proportionate way of achieving your purpose. You cannot rely on legitimate interests if there is another reasonable and less intrusive way to achieve the same result.  You must balance your interests against the individual’s interests. In particular, if they would not reasonably expect you to use data in that way, or it would cause them unwarranted harm, their interests are likely to override yours. However, your interests do not always have to align with the individual’s interests. If there is a conflict, your interests can still prevail as long as there is a clear justification for the impact on the individual. |
|  | Recipient of data | Where you have processed the individual’s data with a third party you will be obliged to inform the individual who such recipients or categories of recipients of that data are.  These can include for example:   * Clients that you introduce or supply individuals to (if you supply into a particular sector, you can choose give examples e.g. schools, nurseries, hospitals, care homes, local authorities, warehouses. You do **not** need to name each individual client. * Candidates’ former or prospective new employers that you obtain or provide references to * The Recruitment and Employment Confederation (and any other trade body that you are a member of who may have access to your candidates’ data) * Any other third parties who carry out audits to ensure that you run your business correctly or line with your * Payroll service providers who manage your payroll on your behalf * Any umbrella companies that you pass candidate data to * Other recruitment agencies in the supply chain (e.g. master/neutral vendors and second tier suppliers); * Your insurers * Your legal advisers * Social networks * Your IT and CRM providers * Any public information sources and third party organisations that you may use to carry out suitability checks on work-seekers e.g. Companies House, the Disclosure and Barring Service (DBS), National College for Teaching and Leadership (NCTL), Nursing and Midwifery Council (NMC), General Medical Council (GMC), DVLA, credit reference agencies * Government, law enforcement agencies and other regulators e.g the Police, Home Office, HMRC, Employment Agencies Standards Inspectorate (EASI), Local Authority Designated Officers (LADOs), GLAA, * Trade unions; * Any of your group companies; and * Any other organisations an individual asks you to share their data with. Please note that this is not an exhaustive list. You will need to examine your recruitment practices and identify any parties that you process personal data with. |
|  | Statutory/contractual requirement | You need to inform the individual if the provision of personal data is a statutory or contractual requirement, or a requirement necessary to enter into a contract. Recruitment businesses must collect certain personal data to meet statutory obligations, such as the Conduct of Employment Agencies and Employment Businesses Regulations 2003 – for example, they have to check identity, right to work, suitability for the role, qualifications and experience.  You will also need to inform the individual whether they are obliged to provide the personal data and the possible consequences of failure to provide such data. In reality, if a recruitment business does not or cannot do all of these checks it may not be able to introduce or supply a work seeker to a client. |
|  | Overseas transfers | The GDPR **only** allows the transfer of personal data to countries outside of the EU/EEA in specific circumstances:   1. The European Commission decides that a country can ensure an ‘adequate level of protection’ of personal data. A list of the third countries and territories/international organisations to which the European Commission has decided, has an adequate level of protection is available on the [European Commission’s website.](https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/adequacy-protection-personal-data-non-eu-countries_en) The countries currently listed include Andorra, Argentina, Canada (commercial organisations), Faroe Islands, Guernsey, Israel, Isle of Man, Jersey, New Zealand, Switzerland, Uruguay and the US. 2. In the absence of an adequacy decision, a data controller and data processor have provided appropriate safeguards and have made available to data subjects enforceable data subject rights and effective legal remedies. ‘Appropriate safeguards’ may include the following:  * a legally binding agreement between public authorities or bodies; * binding corporate rules; * standard data protection clauses adopted by the European Commission; * standard data protection clauses adopted by a supervisory authority and approved by the European Commission; * subject to authorisation from the competent supervisory authority, appropriate safeguards may also include: * Contractual clauses between the controller or processor and the controller, processor or the recipient of the personal data in the third country or international organisation that have been authorised by a competent supervisory authority; * Provisions to be inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights.  1. In the absence of an adequacy decision or appropriate safeguards, the:  * data subject has given his/her explicit consent to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject due to the absence of an adequacy decision ad appropriate safeguards; * transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject’s request; * transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another legal person; * transfer is necessary for important reasons of public interest; * transfer is necessary for the establishment, exercise or defence of legal claims; * transfer is necessary in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent; * transfer is made from a register which according to Union or Member State law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate a legitimate interest, but only to the extent that the conditions laid down by Union or Member State law for consultations are fulfilled in the particular case.   Further information on can be found in [Articles 44 – 50 of the General Data Protection Regulation (GDPR).](https://gdpr-info.eu/chapter-5/)  Please speak with your IT team/ provider to check if data is transferred outside the EEA. |
|  | Data retention | You must set out how long you will store personal data for, or if that is not possible, how you decide how long to store the data.  Given the nature of recruitment you will likely need to store specific data for certain time periods for the purposes of the Conduct Regulations and tax legislation etc. If you process data for specified periods not already listed in this section then add this here.  The REC has produced [a record keeping table](https://www.rec.uk.com/legal-resources/legal-guide/gdpr/Record-keeping-table-2018-official.pdf) that you may find useful in helping you determine how long you intend to retain data.  Please note that the REC Legal team will not produce a retention policy for members. You will need to determine your own retention policy based on your business needs and any specific sector requirements. |
|  | Data retention – “do not supply lists” | Recruiters may keep lists of work seekers they no longer wish to supply or introduce to clients i.e. a “do not supply list”. The GDPR does not expressly prevent keeping such a list but recruiters must have a legal basis for processing the data on that list (be aware though that there may be other reasons for not keeping a list such as potentially breaching the Equality Act 2010 if individuals with protected characteristics as included on the list for no reason other than those protected characteristic). For example, the recruitment business will have a legitimate interest in recording safeguarding issues (there would also be a public interest in that) but this is quite different to recording someone’s state of dress which someone objected to or the fact that a client merely did not like them. If allegations were ever made against an individual were those allegations properly investigated prior to their inclusion on such a list?  If the recruitment business receives a subject access request, it would have to reveal if an individual was on a “do not supply list”. So, be careful about who and what is put on those lists and why – you must be able to justify keeping such a list and justify an individual’s inclusion on that list. |
|  | Your rights | You must tell the individual of their rights under current data protection laws, as well as their right to withdraw their consent to processing their personal data at any time.  REC has produced an infographic “[Jobseekers – know your data protection rights](https://www.rec.uk.com/legal-resources/legal-guide/gdpr/Know-your-rights-Jobseekers.pdf)” which you can also give to individuals. |
|  | Automated decision-making | An individual will have the right to know of the existence of any automated decision making processes, including profiling, which produces legal effects on him or her or similarly significant affects him on her.  If you have subjected the individual to automated decision making or profiling, then you will need to provide meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the individual.  If you have not subjected the individual to automated decision making or profiling you can either delete this section or include a statement to confirm that you do not use automated decision making.  For more information on automated decision making processes please refer to the [Article 29 Working Party guidance on automated decision making and profiling](https://www.rec.uk.com/legal-resources/legal-guide/gdpr/GDPR-Art-29-Working-Party-Guidance-on-automated-decision-making-and-profiling-Oct-2017.pdf). |
|  | Complaints | [Insert agency name] must inform the individual of their right to raise a complaint with the relevant supervisory authority (which is the ICO in the UK). However, it is a good idea to ask individuals to make a complaint to [Insert agency name] so that you can try to resolve the issue internally. |

**Delete this page from the form given to the work-seeker**

**Amendments**

We list here the main amendments rather than every word. We recommend that members adopt the amended terms in their entirety rather than amend individual provisions.

| **Clause** | **Related Note** | **Description** |
| --- | --- | --- |
| **Amendments made in November 2020 to May 2018 version** | | |
| Throughout |  | In light of new DBS filtering rules come into effect on 28th November 2020 we have updated the legislation to read the **Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (2013 and 2020).** We have also modified the question on page 2 and the DBS appendix 3. |
| **Amendments made in May 2018 to June 2014 version** | | |
| Annex A | 4 - 15 | We have updated this to refer to the General Data Protection Regulation which comes into effect on 25 May 2018. We have incorporated the model privacy notice (DP5A) in order to make it easier for members to inform data subjects of how their data will be processed. The Government have also published a new Data Protection Bill to replace the Data Protection Act 1998 but at the time of writing we do not know when that will come into effect. |