



**partnership**  
information network  
*for the service by the service*

# SAFER PRE AND POST EMPLOYMENT CHECKS IN NHSSCOTLAND PIN POLICY

**MARCH 2014**

# **SAFER PRE AND POST EMPLOYMENT<sup>1</sup> CHECKS IN NHSSCOTLAND PIN POLICY**

**MARCH 2014**

The Scottish Government, Edinburgh, 2014

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<sup>1</sup> See section 2.1 for details of full scope of application beyond directly employed staff

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## Ministerial Foreword



NHSScotland aims to deliver the highest quality healthcare services and, through this, to ensure that we are recognised by the people of Scotland as amongst the best in the world. The Quality Strategy sets the overall direction for achieving this, both now and in the future, focussing on three Quality Ambitions: ‘person-centred’, ‘safe’, and ‘effective’. The 2020 Vision for Healthcare recognises that, over the coming years, the demands for healthcare and the ways in which it is delivered will be radically different.

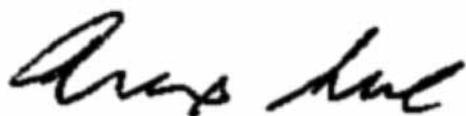
‘Workforce’ is therefore one of the 12 strategic priorities in the Route Map to the 2020 Vision. The accompanying 2020 Workforce Vision, ‘Everyone Matters’, which I launched in June 2013, sets out our vision for the workforce, with values that are shared across NHSScotland, and asks everyone who works for NHSScotland to play their part in supporting the changes and living these values. The accompanying Implementation Framework and Plan sets out our five Priorities for Action in a 7-year plan to 2020 and will allow us to measure progress in these important areas.

I am proud of the progress made by NHSScotland Boards in striving towards exemplar employer status. Staff Governance (ensuring the fair and effective management of staff), has been enshrined in legislation, and is an integral part of the NHSScotland Governance Framework. Similarly, the evolution of partnership working between employers and trade unions/professional organisations at both local and national level has helped to ensure that we have employment relations which have been described by an independent report as ‘groundbreaking’ and ‘arguably the most ambitious labour-management partnership so far attempted in the UK public sector’.

The development of NHSScotland Partnership Information Network (PIN) Policies provides a means of further ensuring sound staff governance practice. They set a minimum standard of practice in the area of employment policy, helping to ensure a fair and consistent means of managing staff which meets both current legislative requirements and best employment practice. These PIN Policies have been published following significant work in partnership between the Scottish Government, NHSScotland employers and recognised trade union/professional organisation partners, and following widespread consultation across the service.

These PIN Policies also form part of the terms and conditions of employment of all NHSScotland employees. While Boards may develop policies to meet particular local needs, I expect all Boards to adhere to the PIN Policies and ensure that practice never falls short of any of the provisions set out within these policies. By doing so, we can ensure that employees are treated fairly and consistently irrespective of the part of the service in which they work.

I am asking all NHSScotland managers and leaders to ensure that they adopt and embrace the PIN Policies within their Boards and within their individual roles. I am also tasking Employee Directors and Board Partnership Forums to champion these policies and to raise non-compliance in a positive and constructive manner.

A handwritten signature in black ink, appearing to read 'Alex Neil', written in a cursive style.

Alex Neil MSP  
Cabinet Secretary for Health and Wellbeing

# Preface

## Staff Governance

Staff Governance is defined as “a system of corporate accountability for the fair and effective management of all staff”. The [Staff Governance Standard](#)<sup>2</sup>, which is applicable to all staff employed in NHSScotland, sets out what each NHSScotland employer must achieve in order to improve continuously in relation to the fair and effective management of staff. The Standard requires that all NHS Boards must demonstrate that staff are:

- Well informed;
- Appropriately trained;
- Involved in decisions which affect them;
- Treated fairly and consistently; and
- Provided with an improved and safe working environment.

It is recognised that staff are central to achieving the principal aims of NHSScotland, namely to improve health and wellbeing, and to deliver high quality care to those with ill health. Achievement against the Staff Governance Standard is therefore key to the effective and efficient delivery of services by providing an environment that is inclusive and conducive to employees giving of their best.

NHSScotland’s commitment to staff governance has been reinforced by its legislative underpinning within the [National Health Service Reform \(Scotland\) Act 2004](#)<sup>3</sup>, which ensures parity with the other two governance pillars of clinical and financial governance.

## PIN Policies

Partnership Information Network (PIN) policies define a minimum standard of best employment practice and are designed to achieve a consistent approach to the way NHSScotland deals with its employees. They have been developed in partnership between NHSScotland management, trade unions/professional organisations and Scottish Government. While local adaptations may be agreed in partnership to suit Boards’ own local needs, any such adaptations must still meet or exceed the minimum standards set out within the PIN policies.

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<sup>2</sup> <http://www.staffgovernance.scot.nhs.uk>

<sup>3</sup> <http://www.legislation.gov.uk/asp/2004/7/contents>

Compliance with the Staff Governance Standard includes implementation of PIN policies. Boards will be expected to evidence adherence to the PIN policies as part of the annual SAAT and accountability review processes. Part 1: Principles and Partnership of the *Agenda for Change Terms and Conditions Handbook*<sup>4</sup> incorporates PIN policies within the terms and conditions of employment of all NHSScotland staff and serves to further reinforce the fact that adherence to the minimum standards set out within them is mandatory for all NHSScotland Boards.

Board Partnership Forums therefore have a key role in ensuring that locally developed policies meet or exceed the minimum standards set out in the PIN policies; and in raising non-compliance in a positive and constructive manner.

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<sup>4</sup> <http://www.msg.scot.nhs.uk/wp-content/uploads/Agenda-for-Change-Handbook-Master-Scottish-Copy-Amendment-24.pdf>

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# 1 Introduction

- 1.1** The purpose of this Partnership Information Network (PIN) policy on *Safer Pre and Post Employment Checks in NHSScotland* is to set a minimum standard for the undertaking of checking procedures, where required by law or otherwise considered mandatory both prior to, and following, appointment to undertake paid work or prior to and following engagement in other forms of unpaid placement within NHSScotland Boards.
- 1.2** It is designed to promote fairness and consistency of treatment in compliance with Boards' obligations under the [NHSScotland Staff Governance Standard](#).
- 1.3** Unlike other PIN policies, no model policy is provided. While most of the provisions should feature within Boards' local recruitment and selection policies, it is recognised that many of the other provisions will be more appropriately contained within other separate and distinct local policies. That said, Boards must ensure that their local policies meet or exceed the minimum standards set out within this PIN Policy, and that they are developed and agreed, as well as being subjected to regular review, in partnership.

## 2 Main Report

### 2.1 Scope

- 2.1.1** This PIN Policy applies in the case of all applicants for paid work within NHSScotland, as well as to those subsequently engaged in such work. It applies to those engaged directly in paid work (whether on a permanent, fixed-term or zero-hours contract basis) by an NHS Board, as well as to those engaged indirectly in paid work via another originating organisation (i.e. those undertaking work on behalf of an external agency, via NHSScotland bank/locum arrangements and secondees).
- 2.1.2** However, it additionally applies to applicants for and those subsequently engaged in other forms of unpaid placement within NHSScotland, such as volunteers, students on placement, individuals undertaking work experience and individuals with honorary contracts<sup>5</sup>.
- 2.1.3** This PIN Policy does not apply in relation to the checks required when adding General Medical Practitioners to an NHS Board's Performer List (details of which are set out within the [National Health Service \(Primary Medical Services Performers Lists\) \(Scotland\) Regulations 2004](#)). However, it does apply in relation to circumstances in which Boards engage such individuals directly in paid work.
- 2.1.4** Recognising that NHS Boards may participate in the process of selecting individuals for entry onto foundation or speciality medical training programmes, this PIN Policy does not cover the checks which are undertaken as part of that process (details of the checking requirements involved as part of this selection process are available from NHS National Education for Scotland). However, a subsequent allocation offer for a training programme is not an offer of employment, which can only be made by an NHS Board having separately satisfied itself that the individual concerned meets the requirements of employability, by undertaking the relevant checks as set out within this PIN Policy. Such checks must be undertaken in full – both upon commencement of the training programme and thereafter during the programme in circumstances involving a move to a new employing Board.

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<sup>5</sup> 2.1.2 Although for ease of reference, unless making specific reference to a category of placement other than directly employed staff, the PIN will generally use language pertaining to individuals applying for or subsequently engaged in work.

**2.1.5** Appendix 1 sets out the broad applicability of each type of check which requires to be carried out before an individual commences placement in relation to general categories of placement. However, it must be recognised that the level and degree of pre and post placement checks will vary according to the nature of the specific placement concerned, being proportionate to the level of risk or opportunity to cause harm or damage (including harm or damage to organisational reputation) which exists.

## **2.2 Strategic Framework/Organisational Culture**

**2.2.1** NHSScotland Boards have a responsibility to ensure the safe and effective provision of healthcare services to the people of Scotland.

**2.2.2** It is therefore crucial that Boards ensure that those working within their organisations:

- Possess the essential knowledge, skills and other attributes required to undertake their roles;
- Are legally permitted to undertake such roles; and
- Are of sound character to undertake such roles.

**2.2.3** In order to achieve this, it is essential to ensure that the necessary checks are undertaken to the required standard.

**2.2.4** Failure to do so can result in the following:

- Risks to organisational performance;
- Risks to staff morale;
- Increased costs;
- Risks to the health, safety, and even the lives, of staff, patients or service users; and
- Risks of prosecution.

## 2.3 Legal Framework

**2.3.1** While specific pieces of legislation are referred to within the main body of this PIN Policy, they should not be considered to be exhaustive. Due to the nature of this PIN Policy, the legislation which applies is extensive.

**2.3.2** Boards should refer, where necessary, to the Central Legal Office for specific queries. However, the following sources of further guidance on applicable legislation will be helpful:

- [Disclosure Scotland](#)
- [Equality & Human Rights Commission](#)
- [Health & Safety Executive](#)
- ~~[UK Border Agency](#)~~

## 2.4 Principles and Values

The following underlying principles and values are crucial to the fair, consistent and effective implementation of this PIN Policy:

- Individuals must not be engaged in paid work or other unpaid placement within Boards until all necessary checks have been carried out to the satisfaction of the organisation;
- The level and degree of checks carried out (both prior to and following placement) must be proportionate to the level of risk or opportunity to cause harm or damage (including harm or damage to organisational reputation) which exists in relation to the specific role to be undertaken;
- Such checks must be carried out thoroughly and consistently, and in a timely manner;
- While the outcome of such checks may mean that an individual absolutely cannot be engaged (or continue to be engaged) in paid work or other unpaid placement, engagement must not otherwise be unreasonably refused;
- Any decisions as a result of such checks must be made objectively and without bias, and be based on the balance of risk, and the overriding need to ensure the safe and effective provision of healthcare services to the people of Scotland; and

- In all cases, the process of undertaking checks and any resulting decisions must comply with both current legislation and national policy.

## **2.5 Roles and Responsibilities**

### **2.5.1 NHS Boards**

Boards are ultimately responsible for ensuring that satisfactory checks are undertaken for those working within or on behalf of their organisations, irrespective of their employment status.

NHS Boards will ensure that:

- Local policies which have been agreed in partnership and which meet or exceed the minimum provisions contained within this PIN Policy are implemented;
- Responsibilities for undertaking relevant checks, and for undertaking any resulting decision-making, are clearly assigned and communicated to those with such responsibilities, and that those with such responsibilities are appropriately trained in order to undertake their respective roles effectively;
- Where such checks are necessarily and appropriately delegated to another organisation, relevant accountable officers are identified within the Board who will be responsible for ensuring that an agreement is fully implemented in order that such checks are carried out to the satisfaction of the Board;
- Mechanisms are in place to support implementation of local policies, including (but not limited to) ensuring timely and appropriate referral to other organisations and ongoing professional registration of staff; and
- Local policies are subject to ongoing monitoring in order to assess whether they are being fairly and consistently applied, and that the stated principles and values are being met; and that they are subject to regular review, in partnership, to ensure that they remain fit for purpose.

### **2.5.2 Managers/HR**

Managers will ensure that:

- Those applying for employment or other work placement, and those already so engaged within the Board, are aware of their obligations under local policies;
- They are aware of and fulfil their responsibilities under local policies in relation to undertaking relevant checks, resulting decisions and record keeping, including compliance with the stated principles and values; and
- They seek further advice from HR and/or Occupational Health & Safety, as appropriate, where concerns arise as a result of those checks.

While ultimate decision-making and accountability for the same, in relation to the outcome of relevant checks rests with management, it is recognised that HR functions within Boards may undertake some of the checks on behalf of managers.

HR will:

- Undertake relevant checks on behalf of management, as set out within local policies;
- In partnership, develop and deliver training to key stakeholders on their responsibilities under local policies; and
- Provide advice to managers, where sought, to ensure compliance with current legislation and local/national policies.

### **2.5.3 Applicants for work/placement**

Applicants for paid work or other forms of unpaid placement will:

- Ensure that when requested they provide full, accurate and timeous information to the Board, or other originating organisation to which responsibility for relevant checks has been delegated.

#### **2.5.4 *Those engaged in work/placement***

Those subsequently engaging in paid work or other forms of unpaid placement will ensure that:

- They maintain professional registration where this is a requirement of the role;
- They adhere to their individual duty of care and do not act in any way which might endanger themselves or those around them (this includes a duty to report any concerns that they may have been exposed to a serious communicable disease);
- They make the Board (or other originating organisation) aware, following appointment, where they are charged with or convicted of a criminal offence; and
- In the case of employees of the Board, that they comply with local policy provisions with regard to the undertaking of secondary work activity, at all times ensuring that they fulfil their contractual obligations.

#### **2.5.5 *Trade Unions/Professional Organisations***

Trade unions/professional organisations will:

- Ensure that local policies are implemented which have been agreed in partnership and which meet or exceed the minimum provisions contained within this PIN Policy;
- Support their members, ensuring that they are aware of their rights and responsibilities under this and other relevant policies; and
- In partnership with the organisation, participate in ongoing monitoring and regular review of such local policies, to ensure that they are being fairly and consistently applied, that the stated principles and values are being met, and that such local policies remain fit for purpose.

#### **2.5.6 *Occupational Health***

Occupational Health will:

- Provide independent expert advice to inform the pre placement health clearance decision-making process, advising on whether the roles for which individuals are being considered are suitable and safe for them

to undertake, and on any reasonable adjustments which should be considered in order to enable them to undertake such roles (in order that the organisation can comply with its legal obligations in this regard). Their role is advisory in nature, with ultimate decision-making responsibility for appointments resting with managers.

## **2.6 Responsibility for Undertaking Checks**

**2.6.1** Boards are ultimately responsible for ensuring that satisfactory checks are undertaken for those working within or on behalf of their organisations.

**2.6.2** There may, however, be circumstances in which such checks are delegated to another organisation from which such individuals originate (e.g. a supplier of temporary agency staff or an educational establishment). However, in such cases, Boards must satisfy themselves that the appropriate checks, as outlined in this PIN, are being undertaken, by way of regular audit and monitoring processes.

**2.6.3** In such cases an agreement should be in place between all parties which sets out:

- Who will undertake the required checks;
- That such checks must be undertaken satisfactorily in line with the provisions set out within this PIN Policy;
- The process to be followed where the party undertaking the checks is notified of a change in an individual's circumstances;
- Action which may be undertaken should there be a failure to undertake such checks satisfactorily; and
- The right of the Board to audit and monitor the other party in respect of delegated checks.

### **2.6.4 *Suppliers of Temporary Agency Staff***

**2.6.4.1** Boards should ordinarily only use agencies which are part of national contract provisions. Information on national contracts can be provided by the Board's Procurement Department. Given that agencies under national contract for the provision of temporary clinical staff are already required, as part of the terms and conditions of such contracts to comply with the provisions of this PIN Policy, a separate agreement between those agencies and Boards

is not required. National contracts for agencies providing non-clinical temporary staff do not make reference to this PIN Policy. However, they do set out an obligation upon such agencies to comply with delegated checks as required of them by Boards. All national contracts for the provision of temporary agency staff set out the right of Boards to undertake audit and monitoring to ensure that approved agencies are complying with their obligations with regard to checks, and a requirement for approved agencies to comply with any requests for information as part of the audit and monitoring process in a timely manner.

2.6.4.2 Additionally, in the case of agencies involved in the supply of temporary medical staff, the [Code of Practice in the appointment and assessment of locum doctors](#) sets out obligations on the part of temporary medical staff, agency suppliers and Placement Boards. These same obligations also apply in the case of temporary medical staff supplied via the NHSScotland Staff Bank with the Recruiting Board being required to comply with the equivalent obligations upon an agency supplier (although please see below).

## **2.6.5 NHSScotland Medical Staff Bank**

2.6.5.1 *National Governance & Standards for Supplementary Medical Staff* have been developed to enable NHS Boards to work cooperatively to deliver local supplementary staffing solutions, facilitated by access to a single database<sup>6</sup> of available bank workers, collectively known as the NHSScotland Staff Bank. The national standards are set out in [NHS CEL\(2013\)16](#). The following provisions apply in the case of the NHSScotland Staff Bank as it currently exists, as well as to any further such arrangements which might be introduced in future for other staff groups.

2.6.5.2 Where an individual seeks to join the Bank, the Recruiting Board (i.e. the employing Board, or another identified Board where the individual does not hold a contract of employment within NHSScotland) will be responsible for undertaking all necessary checks as identified within this PIN Policy, for recording confirmation of having done so on the database and for ensuring that the database is updated on an ongoing basis (including the removal of individuals from membership of the Bank where appropriate).

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<sup>6</sup> In development at the time of publication of this PIN Policy

- 2.6.5.3 Placement Boards must ensure that they check the database on each occasion prior to placement of an individual.
- 2.6.5.4 As a condition of bank membership, individuals will consent to the database including details of their PVG Scheme membership (i.e. their membership number, the type of regulated work that they are permitted to undertake and the date on which a Scheme Record was last obtained) and whether they possess additional EPP (Exposure Prone Procedures) clearance. If an individual does not possess EPP clearance, or is not permitted to undertake either type of regulated work, they will not be allowed to join the bank.
- 2.6.5.5 The Recruiting Board will remove individuals from membership of the Bank, on a temporary or permanent basis as appropriate, in the following circumstances:
- Where eligibility to work in the UK is lost;
  - Where the individual is considered for listing or becomes barred from undertaking one or both types of regulated work;
  - Where the individual is charged with or convicted of a criminal offence, and depending on the nature and severity of that offence;
  - In circumstances where the individual is not professionally registered (or does not possess a licence to practice in the case of doctors) or where the individual is subject to fitness to practice proceedings (depending on the advice of the relevant statutory regulatory body);
  - Where the individual is subject to internal proceedings relating to capability (impacting on performance or attendance) or conduct, and depending on the nature and severity of those proceedings; or
  - Where the individual themselves chooses to cease membership of the Bank or, where applicable, otherwise ceases employment with the Recruiting Board.
- 2.6.5.6 The Recruiting Board may additionally suspend bank membership where an individual would breach working time limits by undertaking additional placements.

- 2.6.5.7 Upon joining the bank, individuals should be asked, by the Recruiting Board, which NHS Boards they would wish to be considered being placed in. As an additional safeguard against individuals illegally undertaking regulated work, the lead signatory in those Boards within which the individual has expressed an interest in being placed should also register an interest in that individual with Disclosure Scotland, in order that they will be notified if the individual is subsequently considered for listing or becomes barred from undertaking the type of regulated work identified with which they may be involved.
- 2.6.5.8 Whilst it will be for the Recruiting Board to notify a Placement Board of an individual's expression of interest to undertake work with the Placement Board, it will be for the Placement Board themselves to register an interest in that individual with Disclosure Scotland. In such circumstances, they should write to Disclosure Scotland, confirming the individual's name, PVG Scheme membership number and the type of regulated work with which they may be involved. This should be followed up with a further communication to Disclosure Scotland to check that their registration of interest has been received and recorded.
- 2.6.5.9 Placement Boards may alternatively request a Scheme Record Update (see section 2.10), rather than solely registering an interest in an individual, although there is no obligation to do so under this PIN Policy.
- 2.6.5.10 Where an individual no longer wishes to be placed within a particular Board (or is otherwise removed from membership of the Bank), it will be for the Recruiting Board to notify the relevant Placement Board, who will then be responsible for contacting Disclosure Scotland to ensure that their registration of interest in that individual is removed.

## 2.7 Decision Making

- 2.7.1** Boards must ensure that an unconditional offer of employment (or agreement to engage in the case of applicants for other forms of work) is not made until all relevant checks have been undertaken to the satisfaction of the organisation.
- 2.7.2** Boards must also ensure that they comply with their responsibilities as set out within the [Embracing Equality, Diversity and Human Rights PIN Policy](#), in relation to both the undertaking of relevant checks and the subsequent decision-making process.
- 2.7.3** The approach to be followed in terms of concerns arising as a result of specific checks is detailed within the relevant sections which follow. However, in general terms, while the outcome of such checks may mean that an individual absolutely cannot be engaged in employment or other work placement, they may equally give rise to issues where the Board must make a decision as to whether or not they may be engaged. In such cases, employment (or engagement in other work placement) should not be unreasonably refused, but rather a decision must be made based on the balance of risk (in all such cases seeking HR advice before reaching such a decision).
- 2.7.4** Where it has been identified that an individual has intentionally failed to provide accurate and truthful information, or has withheld information that is relevant to their placement, NHS Boards will not progress such applications further.
- 2.7.5** Where such discovery is made following employment, this should be considered a disciplinary matter and be managed in line with Boards' local policies developed in line with the [Management of Employee Conduct PIN Policy](#). In the case of individuals engaged in other work placements which do not entail employment with the Board, consideration should be given to ending the placement as a result of such a discovery.
- 2.7.6** In exceptional circumstances, where checks reveal substantial misdirection, it may be appropriate to report concerns to other bodies (such as the police, UK Border Agency (section 2.9), statutory regulatory bodies (Appendix 3B), Disclosure Scotland (Appendix 4) or NHSScotland Counter Fraud Services (section 2.16)).

## 2.8 Verification of Identity

**2.8.1** It is vital that the identity of an individual is reliably verified before they are engaged in work.

**2.8.2** Verification of identity checks are designed to:

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

**2.8.3** Individuals will need to provide either of these two combinations:

- Two forms of photographic personal identification and one document confirming their address; or
- One form of photographic personal identification and two documents confirming their address.

**2.8.4** If an individual seems genuinely unable to provide any acceptable photographic personal identification, then each of the following should be requested:

- Two forms of non-photographic personal identification;
- Two documents confirming their address; and
- A passport-sized photograph of themselves.

(All documents must be from a different source. In order to prove the identity of the individual, photographs must be endorsed by someone who works in (or is retired from) a recognised profession or be a person of good standing in their community (see <https://www.gov.uk/countersigning-passport-applications> for examples). They cannot be closely related to or involved with the person applying, they must have known the person concerned for at least two years and they must be in a position to be able to identify them. They should write on the back of the photograph '*I certify that this is a true likeness of [title and full name]*' and add their signature and the date. They should also provide a separate signed statement confirming that they have known the individual for more than two years and that the individual is who they claim to be. Always check that the signature on the statement matches with the one on the back of the photograph and that it contains a legible name, address and telephone number. It is good practice to contact the signatory to authenticate the details of the statement.)

- 2.8.5** Lists of acceptable photographic and non-photographic personal identification and documents for confirming address are provided at Appendix 2 (Annex A).
- 2.8.6** All documents provided must be valid, current and original. Where copies of originals are provided, these must be certified by a solicitor. Documents downloaded from the internet must not be accepted.
- 2.8.7** Where identify documents are provided in a foreign language, an independently verified translation must be obtained. Identity documents of a foreign equivalent must not be accepted if listed as 'UK' on the list of acceptable forms of identification.
- 2.8.8** Boards are required to check the validity of the document(s) and be satisfied that the individual is the person named in the documents presented. A face-to-face meeting is therefore an essential part of the verification process in order to match the individual with their photographic ID (ideally this should take place during the selection process itself. However, if this is not possible a further face-to-face meeting would be required).
- 2.8.9** Documents must not be taken at face value and Boards must ensure they are checked thoroughly. They must therefore make it clear that any relevant documents will be checked for authenticity. Guidance on how to check the authenticity of documentation provided is set out at Appendix 2 (Annex B).
- 2.8.10** Documents should not be checked in isolation, instead being cross-referenced with other information supplied, to check an individual's:
- Full name – forenames and last name;
  - Signature;
  - Date of birth; and
  - Full permanent address.

## **2.9 Entitlement to Work in the UK**

- 2.9.1** Satisfactory checks must be undertaken to verify an individual's entitlement to work in the UK before they are engaged directly in paid work within a Board.
- 2.9.2** Some people are automatically entitled to work in the UK. Others may have restrictions on how long they can stay, whether they can work or the type of work they can do. Under the Immigration, Asylum and Nationality Act 2006, all employers in the UK have a responsibility to prevent illegal migrant working. Boards must therefore check the entitlement of everyone they plan to employ. A failure to do so may result in a civil penalty. If an employer knowingly employs an illegal migrant worker, they may face criminal prosecution, which could result in an unlimited fine and/or a maximum two-year prison sentence.
- 2.9.3** Boards are not required to undertake a check on entitlement to work in the UK in relation to those placed in their organisations for work experience or for training purposes via a recognised education provider.
- 2.9.4** Boards are advised to seek legal advice in relation to 'volunteering' arrangements within their own organisations, in order to ensure that, where these might more appropriately be defined 'unpaid work', they then undertake the necessary checks on entitlement to work in the UK.
- 2.9.5** Boards must ask individuals to produce certain documentation to ensure that they can work for them lawfully.
- 2.9.6** Such documentation should be checked and copied (in some cases original documents need to be retained) before an individual commences employment.
- 2.9.7** Boards cannot assume that someone from an ethnic minority is an immigrant, nor assume that someone is British because they think that they appear to be so, and must therefore carry out such checks in all cases to avoid racial discrimination.

**2.9.8** Individuals must provide:

- One of the original documents alone from List A or List B; or
- Two of the original documents in the specified combinations required from List A or List B.

**2.9.9** Documents from List A (see link below at section 2.9.13) will establish a statutory excuse for the duration of an individual's employment.

**2.9.10** Documents from List B (see link below at section 2.9.13) will indicate that an individual only has limited permission to be in the UK. To maintain a statutory excuse in such circumstances, repeat checks of documents from List B should be carried out at least once every 12 months. The specified steps given above should be undertaken and records kept of the date the check was carried out. This process must continue until the individual is able to provide specified documents, from List A, which indicates a right to remain and work permanently in the UK.

**2.9.11** Boards are required to check the validity of the document(s) and be satisfied that the individual is the person named in the documents presented, that they have the necessary leave to enter (or remain) in the UK and that they are permitted to do (or continue to do) the work in question. Boards must make it clear to individuals that any relevant documents will be checked for authenticity. Guidance on how to check the validity of documentation provided is set out at Appendix 2 (Annex B). If presented with a document which is considered false or, whilst genuine, not to belong to the individual concerned, Boards should report the matter to the [UK Border Agency](#) (see link at section 2.9.13 below).

**2.9.12** Boards should not continue to employ an individual who is not entitled to work in the UK (although they should always first check with the [UK Border Agency](#), as there may be exceptional circumstances in which employment can continue in the case of individuals awaiting a Home Office decision). A hearing should be convened, chaired by an individual with the authority to dismiss. While the process should be carried out in line with the [Management of Employee Conduct PIN Policy](#) (insofar as it would involve holding a hearing to discuss the matter, providing written

notification in advance as to the reason for the hearing and subsequent written notification of the outcome, allowing the right of appeal, and allowing them to be accompanied at both stages by a work colleague or representative of their trade union/professional organisation), it should be made clear in advance that the potential outcome, and subsequently when confirming the outcome, that any resulting dismissal will be/has been on the grounds of 'some other substantial reason' and not 'misconduct'.

**2.9.13** Further guidance on how to prevent illegal working, including permissible documents under List A and List B, is available from the [UK Border Agency](#). Where, when checking entitlement to work in the UK, a Board suspects that they have been presented with a false document, or a genuine document that does not belong to the holder, the matter should be reported to the UKBA who will be able to advise further.

**2.9.14** ***Migrant Workers***

2.9.14.1 If a prospective worker is not a British Citizen, European Economic Area (EEA) or Swiss national (settled workers), they will be subject to the points-based system in that they must pass a points assessment before they can get permission to enter or remain in the UK (although it should be noted that there are some restrictions upon individuals from countries which have recently joined the EEA). Under the points-based system, points are awarded to reflect the migrant's ability, experience and age – and, when appropriate, the level of need in the migrant's chosen industry. However, it should be noted that any individual who holds a current visa under the old immigration rules (e.g. a Highly Skilled Migrant Program (HSMP) visa or work permit) will not have to change their status until they wish to extend their stay.

2.9.14.2 Migrants under Tier 2 of the points-based system (for skilled workers with a job offer) must be sponsored before they can apply to the [UK Border Agency](#) for permission to enter or remain in the UK. If a Board wants to sponsor a migrant under Tier 2, they must apply to the [UK Border Agency](#) for a sponsor licence.

- 2.9.14.3 Boards can only bring someone into the UK under Tier 2 if the job is on the shortage occupation list or if they pass a resident labour market test.
- 2.9.14.4 If an occupation is on the shortage occupation list, it means there are not enough resident workers to fill the available jobs in that particular occupation. If a migrant comes to the UK under Tier 2 to do skilled work that is on the shortage occupation list, they will get all the points they need to apply (except the points for English language and maintenance).
- 2.9.14.5 Boards may wish to recruit a migrant for a skilled job that is not on the list of shortage occupations. Ordinarily, they can only do this if they complete a resident labour market test and can show that no suitably qualified settled worker can fill the job.
- 2.9.14.6 Boards are required to report to the ~~UK Border Agency~~, within a prescribed timescale, on certain issues in relation to sponsored migrants such as failure to commence or certain absence from work, cessations of sponsorship, significant change of circumstance and information regarding potential breaches of conditions of leave.
- 2.9.14.7 Further information, including the current shortage occupation list, resident labour market test and Tier 2 Codes of Practice, can be obtained from the ~~UK Border Agency~~.

## 2.10 Criminal Convictions

### 2.10.1 *Declaration of Criminal Convictions*

2.10.1.1 Under the [Rehabilitation of Offenders Act 1974](#), unless a post is excluded or excepted, individuals are only required to declare, in an application for a role, any convictions which are unspent. A conviction becomes spent after a certain period of time has passed (the 'rehabilitation period'). The length of time it takes for a conviction to become spent will depend on the sentence and it should be noted that some convictions never become spent.

2.10.1.2 The [Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) \(Scotland\) Order 2013](#) sets the exclusions and exemptions to the 1974 Act and where, therefore, Boards are permitted to require applicants to additionally declare spent convictions. Unless a post is exempt or excluded, Boards must advise applicants that they only require to disclose details of unspent convictions within their application.

### 2.10.2 *Disclosure Scotland*

2.10.2.1 [Disclosure Scotland](#) delivers Scottish Ministers' functions under Part V of the [Police Act 1997](#) and under the [Protection of Vulnerable Groups \(Scotland\) Act 2007](#).

2.10.2.2 In addition to any necessary declaration on the application form, depending on the type of work, applicants for work may be required to provide evidence of Protecting Vulnerable Groups Scheme ("PVG Scheme") membership (under the 2007 Act) or be subject to a Disclosure Scotland check (under the 1997 Act) in order that Boards can make safer recruitment decisions and, in the case of PVG, ensure that individuals can safely continue to undertake a particular type of regulated work.

2.10.2.3 Each role should be reviewed individually to identify which Act it falls under (NHSScotland has roles which fall under both Acts) and therefore whether applicants will require a Disclosure Scotland check or PVG scheme membership (based on the information contained in sections 2.10.2.6 and 2.10.2.7 below and seeking further guidance from Disclosure Scotland where necessary).

2.10.2.4 Applicants for all applicable posts must be informed of any such requirement.

2.10.2.5 It should also be noted that a requirement to undertake such checks is not limited to paid work, and will instead be dependent upon the nature of the proposed role.

#### 2.10.2.6 [Disclosure Scotland Checks under the 1997 Act](#)

2.10.2.6.1 There are three certificates available under the 1997 Act:

- *Basic Disclosures*

A Basic Disclosure is available to anyone for any purpose. It contains details of convictions that are unspent under the 1974 Act or states that there are no such convictions. This type of Disclosure is only issued to the applicant. It is not job-specific or job-related.

Whilst there is **no national requirement to obtain Basic Disclosures**, it is for individual Boards to decide locally whether it is appropriate to undertake these.

- *Standard Disclosures*

The Standard Disclosure is available for roles that are excluded or excepted by the 2013 Order. It contains details of spent and unspent convictions under the 1974 Act and whether the individual is included in the sex offenders register or states that there is no information to disclose.

- *Enhanced Disclosures*

The Enhanced Disclosure contains the information included in Standard Disclosures, and other relevant information which a Chief Officer or Chief Constable believes to be relevant to the position in question.

An Enhanced Disclosure is available for work which is excluded or excepted by the 2013 Order and which is in addition prescribed in the [Police Act 1997 \(Criminal Records\) \(Scotland\) Regulations 2010](#). In an NHSScotland context, only purposes prescribed at regulation 9(3)(a) are able to use the enhanced check.

2.10.2.6.2 **The disclosures that are available under the 1997 Act cannot be used for work that is regulated work under the 2007 Act.**

#### 2.10.2.7 [Disclosure Scotland Checks under the 2007 Act: Protecting Vulnerable Groups Scheme \(PVG Scheme\)](#)

2.10.2.7.1 Anyone doing regulated work or intending to do regulated work with children or protected adults, as defined under the 2007 Act, is required by NHSScotland to apply for PVG Scheme membership.

2.10.2.7.2 'Regulated work' is the term used by the 2007 Act to define the types of work which barred individuals must not do, and for which PVG Scheme membership is available.

There are two types of regulated work:

- Work with children (a child is a person under 18 years of age); and
- Work with protected adults (that is a person aged 16 or over in receipt of certain healthcare, welfare or community care services).

It is not possible to provide a definitive list of roles, positions or types of employment that constitute regulated work, not least because the structure and descriptions of people's work is constantly changing. Instead, the 2007 Act defines regulated work by reference to: *the activities that a person does; the establishments in which a person works; the position that they hold; or the people for whom they have day to day supervision or management responsibility.* Further information on whether posts require membership of the Scheme (including an *online self-assessment*) is available from Disclosure Scotland.

2.10.2.7.3 The 2007 Act introduced lists of individuals barred from working with children or protected adults in 'regulated work' as defined within the 2007 Act. It is illegal for a person to undertake or to apply to do regulated work of the type from which they are barred, and it is illegal for an organisation to employ them in such a capacity. The only way for a person to prove that they are not barred is to become a member of the PVG Scheme, and therefore the only way for Boards to satisfy themselves that an individual is not barred from one or both types of regulated work is by asking for evidence of PVG Scheme membership.

2.10.2.7.4 Under the 2007 Act, the decision about whether a person is unsuitable to be a member of the PVG Scheme will be made by Disclosure Scotland (who check all applications for regulated work with children and/or protected adults against the lists held by Scottish Ministers and the equivalent lists held in England & Wales and Northern Ireland).

2.10.2.7.5 Whilst an individual may be lawfully engaged in regulated work on the basis of PVG Scheme membership, the Board will also need to consider any additional vetting information contained within their PVG disclosure record, which may otherwise be relevant to the specific role itself

(for example, driving convictions for individuals whose role involves driving children or protected adults), when reaching a recruitment decision.

2.10.2.7.6 There are three PVG disclosure records available:

- *Scheme Record*<sup>7</sup>

The Scheme Record is designed for use by organisations when asking an individual who does, or is being recruited to do, regulated work for them to join the PVG Scheme for the first time. The organisation must be a registered body with Disclosure Scotland or use an umbrella body to act as a registered body on their behalf.

The Scheme Record is also available for an existing PVG scheme member when:

- The member is only in the Scheme for one workforce (i.e. one of the two types of regulated work) and is seeking to do regulated work in the other workforce (the other type of regulated work);
- The member has not previously had a Scheme Record disclosed (i.e. where they have only been issued with a Scheme Membership Statement); or
- Where a Scheme Record Update reveals that there has been a change to the vetting information held in the scheme member's Scheme Record since it was last disclosed.

The Scheme Record shows basic membership information (common to all three types of disclosure record):

- The type(s) of regulated work in respect of which the individual is a PVG Scheme member (thereby confirming that the individual is not barred from regulated work of that type); and
- If the individual is under consideration for listing for the type(s) of regulated work, states that fact.

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<sup>7</sup> A Scheme Record is used in broadly the same way as an enhanced disclosure. However, unlike enhanced disclosure (which is post specific), a Scheme Record relates to doing regulated work in one or both workforces. It also differs from enhanced disclosure in that the Scheme Record will not be issued if the individual is barred (a letter being issued to the individual and registered body instead).

The Scheme Record also includes any vetting information that exists in relation to the individual. Vetting information is:

- Convictions and cautions held on central records in the UK;
  - Whether the individual is included on the sex offenders register;
  - Other relevant information provided by police forces; and
  - Prescribed civil orders.
- *Scheme Record Update*

The Scheme Record Update is designed for use by organisations when asking an individual who is already a PVG Scheme member (and who has had a Scheme Record issued in the past, whether or not as a request from that same organisation, for the same workforce<sup>8</sup>) to do regulated work for them. The organisation must be a registered body with Disclosure Scotland or use an umbrella body to act as a registered body on their behalf.

The Scheme Record Update shows basic membership information, plus the following:

- The date that the PVG Scheme member's Scheme Record was last disclosed and the disclosure record number of the applicant's copy;
- A statement as to whether that Scheme Record contained vetting information; and either
- A statement confirming that no new vetting information has been added since the Scheme Record was last disclosed or the date of each addition; or a statement confirming that no vetting information has been deleted since the Scheme Record was last disclosed or the date of each deletion.

The Scheme Record Update does not include any vetting information. Depending on the information contained within the Scheme Record Update, organisations will need to take the following steps:

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<sup>8</sup> i.e. one of the two types of regulated work

- Where it reveals that the Scheme Record contained no vetting information, and that no new vetting information has since been added, the organisation does not need to take any further action; or
- Where it reveals that the Scheme Record does contain vetting information, but with no subsequent changes, the individual should be asked to provide their copy of the Scheme Record for inspection, in order to view that vetting information. The date and disclosure record number of the Scheme Record should be checked with the information contained in the Scheme Record Update to confirm that it is the most recent one issued; or
- Where it reveals that there has been a subsequent change to the individual's vetting information since the Scheme Record, an upgrade to a new Scheme Record will be required in order to view the most up-to-date vetting information.

- *Scheme Membership Statement*

Registered bodies should not normally request this type of disclosure because it does not contain all the information to which they are entitled (but they are not prohibited from doing so).

#### 2.10.2.7.7 *Continuous Updating*

Disclosure Scotland will keep the individual's PVG Scheme Record up-to-date. If Disclosure Scotland determines that a PVG Scheme member may have become unsuitable to do regulated work then the person will be placed under consideration for listing. Any organisation that Disclosure Scotland knows that the scheme member is doing regulated work for will be notified of that change in status and of the outcome of the consideration.

It is important to note that Disclosure Scotland will not, however, otherwise routinely advise organisations of new convictions received by scheme members. Therefore, Boards may wish to seek periodic Scheme Record Updates during the course of employment in order to ensure that no new vetting information has subsequently come to light which (although having no bearing on the individual's ability to lawfully undertake regulated work) may otherwise be relevant to their ability to continue to undertake the particular role itself.

### **2.10.3 Overseas Criminal Record Checks**

- 2.10.3.1 Disclosure Scotland cannot access criminal records held overseas (only having access to overseas conviction information if details have been sent to UK authorities and recorded on a UK criminal record system) and therefore a Disclosure Scotland or PVG check in such circumstances may not provide a complete picture of an individual's criminal record. That said, where such a check is required for a post, it must still be undertaken, even if an applicant claims never to have lived in the UK before.
- 2.10.3.2 Therefore, in circumstances where a Disclosure Scotland or PVG check is required for a post, and where applicants are from overseas or have lived and worked outside the UK for more than 12 consecutive months in the preceding five years, criminal record checks should additionally be undertaken in line with the relevant country's justice system.
- 2.10.3.3 Contact details for the embassy or High Commission of the country in question can be obtained from the [Foreign & Commonwealth Office](#) (FCO) or via the FCO Response Centre Helpline on 020 7008 1500.
- 2.10.3.4 Additionally, the [Centre for Protection of National Infrastructure](#) (CPNI) website contains guidance on some of the problems involved in conducting checks in other countries and provides more detailed advice in acquiring criminal history information for a range of countries.
- 2.10.3.5 The quality and type of information obtainable differs from country to country:
- Not all countries operate in the same manner (some, for example, will have centralised records, whilst others may only have locally-held files); and
  - What constitutes a criminal offence in this country may not in another (for example, the threshold for recognition of a sexual offence in France is less than in the UK).
- 2.10.3.6 The accuracy and authenticity of the information typically depends on how the certificates are obtained. Some foreign embassies and High Commissions in the UK initiate requests on behalf of applicants and liaise with the relevant issuing authority abroad.
- 2.10.3.7 In cases where individuals themselves have to apply to the issuing authority directly, the relevant UK-based

embassy or high commission may still be able to provide advice on what to expect. If there is any doubt about the documentation provided, they may also be able to authenticate the search results.

2.10.3.8 In the event that the country of origin is unable to provide criminal record status then it is the responsibility of the Board to carry out the necessary risk assessment on the available information provided to determine whether the prospective employee is employable.

2.10.3.9 However, it should be recognised that, where meaningful background checks cannot be carried out and sufficient assurance cannot be gained by other means, it might not be possible to employ the individual. This may in no way reflect on their honesty and integrity, but simply reflect that the required background checks in the country(s) of residence prior to arriving in the UK were not possible.

#### **2.10.4 Criminal Convictions**

2.10.4.1 Where it is identified that an individual has failed to disclose unspent (and where appropriate, spent) criminal convictions, they should not be offered employment.

2.10.4.2 In the case of regulated work, Boards have the right to ask about vetting information. Therefore, where a Scheme Record Update reveals that vetting information exists and where the individual refuses, without good reason, to provide their copy of the last Scheme Record or consent for the Board to seek an upgrade to a new Scheme Record (where there has been a change to vetting information since the last Scheme Record), they should not be offered employment.

2.10.4.3 Where an individual is barred from undertaking regulated work, they must not be offered employment in regulated work of the type from which they are barred. If the Board is aware that an individual is seeking to do regulated work with them from which that individual is barred, the Board should contact the police.

2.10.4.4 With the exception of the above in relation to regulated work, and while some offences (e.g. those involving violence) might raise serious questions about a person's suitability, criminal convictions (where declared as required) should not automatically prevent employment being offered. A risk assessment should be undertaken, considering the following:

- The nature and number of offence(s);
- How long ago the offence(s) was committed;
- Whether the applicant's circumstances have changed since the offence(s) was committed;
- The impact of the offence(s) on the post applied for; and
- Any explanation offered by the individual with regard to the offence.

- 2.10.4.5 All contracts of employment for staff should include a requirement that they must disclose any criminal conviction or caution incurred since their appointment.
- 2.10.4.6 Whilst Disclosure Scotland will advise Boards in relation to an individual's ability to continue, following appointment, to lawfully undertake regulated work, Boards may otherwise wish to undertake periodic checks with Disclosure Scotland (under either the 1997 or 2007 Acts, as applicable) in order to ensure that they are aware of any vetting information which subsequently comes to light following engagement and which may be relevant to an individual's ability to continue to undertake the particular role in question. Where individual consent for such subsequent checks is required, but is withheld without good reason, the matter should be considered under local Board policies developed in line with the [Management of Employee Conduct PIN Policy](#).
- 2.10.4.7 Following placement, where an individual is subsequently charged with or convicted of a criminal offence, disciplinary action should not be taken automatically. Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with their employer, work colleagues and others, such as patients (see section 2.5.8 of the [Management of Employee Conduct PIN Policy](#) for further information).
- 2.10.4.8 Where associated misconduct relating to a subsequent criminal conviction and/or barring from undertaking regulated work has not resulted in dismissal from an organisation, that subsequent conviction/barring may mean that an employee is unable to meet the terms of their contract. In such cases, a hearing should be convened, chaired by an individual with the authority to dismiss. While the process should be carried out following the

procedure set out within the *Management of Employee Conduct PIN Policy* (specifically, holding a hearing to discuss the matter, providing written notification in advance as to the reason for the hearing and subsequent written notification of the outcome, allowing the right of appeal, and allowing them to be accompanied at both stages by a work colleague or representative of their trade union/professional organisation), it should be made clear in advance that the potential outcome, and subsequently when confirming the outcome, that any resulting dismissal will be/has been on the grounds of 'some other substantial reason' and not 'misconduct'. That said, the hearing should consider whether, in such circumstances, there are any alternatives to dismissal, given that any resulting dismissal will still be subject to the test of reasonableness.

2.10.4.9 The relevant statutory regulatory bodies and Disclosure Scotland may also require to be informed, where an individual is charged with or convicted of a criminal offence or has become barred from undertaking regulated work (see Appendix 3B and Appendix 4 for details on when to refer).

## **2.11 Qualifications**

**2.11.1** For all posts for which a specific qualification is a requirement, evidence of the necessary qualifications should be verified. Even if relevant statutory regulatory bodies check qualifications as part the registration process, Boards must still separately verify an individual's qualifications.

**2.11.2** Individuals may not always have the original documentation and Boards need to use appropriate discretion and take proportionate action. The level of checks carried out should be proportionate to the level of risk to the individual role and the priority given in the person specification to the qualification, or the opportunity to cause harm or damage, in that position.

**2.11.3** Boards are required to check the validity of the document(s) and be satisfied that the prospective employee is the person named in the documents presented. Boards must make it clear to individuals that any relevant documents will be checked for authenticity. Guidance on how to check the authenticity of documentation provided is set out at Appendix 2 (Annex B).

- 2.11.4** Individuals who do not possess the required qualifications (provided the requirement for such qualifications can be objectively justified) must not be offered employment.
- 2.11.5** Individuals who are required to drive in order to carry out the normal duties of a post must hold a licence valid within the UK covering the appropriate classes of vehicle. Where the individual uses their own vehicle in the course of their employment, they must ensure that their insurance policy covers them for business use, and the Board must seek confirmation that this is the case. It is recognised that, during the course of employment, circumstances may arise where an individual becomes disqualified from holding a driving licence and is therefore unable to meet the terms of their contract. However, it is recognised that this may arise on health grounds or as a result of a driving offence. In the case of disqualification on health grounds, the matter should be progressed according to the [Management of Employee Capability PIN Policy](#). In the case of disqualification as a result of a driving offence, the matter should be progressed in line with 2.10.4.8 above, again recognising that any hearing should consider whether, in such circumstances, there are any alternatives to dismissal, given that any resulting dismissal will still be subject to the test of reasonableness.

## **2.12 Language Competency**

- 2.12.1** Most roles within NHSScotland will involve a requirement for individuals to possess a certain level of verbal and/or written communication skills, and as such may require that they have a particular level of proficiency in the English language.
- 2.12.2** That said, stipulation of a language requirement for a role may be indirectly discriminatory unless it is necessary for the satisfactory performance of that role. Where this is the case, such requirement should be detailed within the essential criteria of corresponding person specifications.
- 2.12.3** Boards must seek assurance that individuals meet such essential criteria, irrespective of their actual or perceived background.
- 2.12.4** Where an individual is registered with a statutory regulatory body and a Board assesses an individual as being unsuitable for a role (including UK nationals), due

to poor communications skills (including, but not limited to, English language competence), consideration should be given to referring the matter back to the statutory regulatory body (see Appendix 3B).

### **2.12.5 *Posts which require registration with a UK statutory regulatory body***

2.12.5.1 Individuals who have trained and qualified outside the European Economic Area (EEA) must satisfy UK statutory regulatory bodies of their knowledge of English in order to become professionally registered. Appendix 3 (Annex A) sets out the tests undertaken by the individual statutory regulatory bodies in the case of non-EEA nationals.

2.12.5.2 However, EEA nationals (including Swiss nationals and individuals with an EC right) are exempt from any routine assessment of language competency before registration. While statutory regulatory bodies are not currently able to assess language competency of EEA nationals for the purposes of registration, European legislation also states that migrants should 'have a knowledge of languages necessary for practising the profession in the host member state' and therefore Boards are legally entitled to and indeed have a duty to assure themselves that any potential worker has the necessary communication skills required to safely and effectively undertake the relevant role.

### **2.12.6 *Satisfying an English language requirement***

2.12.6.1 There are a number of ways an applicant could meet and evidence an English language requirement:

- They may be a national of a majority English speaking country or have worked in an organisation/institution where English was the primary language used for communication;
- They may have pursued part of their education in the UK;
- They may hold a degree or relevant educational qualification that was taught in English by a recognised institution abroad;
- They may have lived in a multi-lingual household in which a relative or a carer used English as their primary form of communication; or
- They may have or be required to pass an English language competency test.

2.12.6.2 A proportionate approach should be adopted depending on the extent of communication skills (including English language competence) required. Only where an individual is not otherwise able to demonstrate competence in English and where there exists a doubt about their ability to communicate clearly with patients or colleagues (for example where English is not their first language), should English language testing be considered. It should not be used systematically in the case of all EEA applicants.

2.12.6.3 It is recommended that where it is necessary to undertake a test of English language competence, such a test should be chosen from amongst those already used by statutory regulatory bodies in the case of non-EEA nationals, and as a minimum apply the same competence levels required in the case of each profession as appropriate.

## **2.13 Professional Registration**

### **2.13.1 Pre Employment**

2.13.1.1 Professional registration is intended to protect the public, making sure that those who practice a health profession are doing so safely. For all posts for which registration with a specific statutory regulatory body is a requirement, evidence of professional registration must be verified prior to placement. In the case of medical staff, evidence must also be sought that individuals hold a licence to practice<sup>9</sup>.

2.13.1.2 Evidence of registration must be obtained by directly contacting the statutory regulatory body to ensure ongoing registration. Boards must ask the relevant body to specify whether:

- The individual is appropriately registered;
- The registration covers the proposed role;
- The registration is subject to any current restrictions; and
- The individual is the subject of any fitness to practice investigations which the regulatory body has a duty to disclose.

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<sup>9</sup> Subsequent reference within this section is made solely to 'registration', but should be read to include 'licence to practice' in the case of medical staff.

- 2.13.1.3 A list of statutory regulatory bodies and contact details is set out at Appendix 3 (Annex A).
- 2.13.1.4 Not every statutory regulatory body discloses fitness to practice proceedings openly or online. In addition, some statutory regulatory bodies do not make changes to the registrant's details until proceedings are complete and a sanction or warning has been applied. It is therefore not sufficient simply to consult the statutory regulatory body's website to confirm fitness to practice information.
- 2.13.1.5 Individuals who are not on the appropriate professional register, where this is a requirement for the post, must not be engaged in work.

## **2.13.2 Post Employment**

- 2.13.2.1 Boards should ensure that they have in place mechanisms to ensure that statutory regulatory bodies are promptly informed, as appropriate, where concerns arise which suggest that an individual's fitness to practice may be impaired. Further information on when it is appropriate to do so is set out at Appendix 3 (Annex B).
- 2.13.2.2 It should be a condition of employment contracts that healthcare professionals have the necessary registration throughout their employment in a post for which registration with a specific statutory regulatory body is a requirement. While the duty to maintain registration rests with the healthcare professional, Boards must ensure that mechanisms are in place to check the ongoing registration of staff and thereby prevent the risk of staff whose registration has lapsed, been lost or suspended continuing to practise in a role which requires such professional registration.
- 2.13.2.3 Where an individual's registration has lapsed or been lost, Boards must not permit that individual to continue to operate in a role which requires such registration. Boards are under no obligation to provide work or pay in circumstances where an individual is in breach of their contract of employment as a result of their non-registration. This is also the case in circumstances where an individual's registration has been suspended by way of a sanction imposed by the relevant statutory regulatory body. In all such cases, Boards must ensure a consistent approach is adopted.

- 2.13.2.4 However, where registration is suspended by the relevant statutory regulatory body as a holding measure whilst an investigation is underway into an individual (but where the individual continues to be employed by the Board), suspension from work (where it is identified that this is required) should be on full pay as per Boards' local policies developed in line with the [Management of Employee Conduct PIN Policy](#).
- 2.13.2.5 In circumstances where it is identified that an individual's registration has lapsed, the matter may additionally require to be investigated under Boards' policies developed in line with the [Management of Employee Conduct PIN Policy](#), where concerns exist that the lapse is as a result of a deliberate failure of the individual to maintain their registration.
- 2.13.2.6 Where associated misconduct/capability issues relating to a subsequent loss or suspension (by way of sanction) of professional registration have not resulted in dismissal from an organisation, that subsequent loss/suspension may mean that an employee is unable to meet the terms of their contract. In such cases, the matter should be progressed in line with 2.10.4.8 above, again recognising that any hearing should consider whether, in such circumstances, there are any alternatives to dismissal, given that any resulting dismissal will still be subject to the test of reasonableness.

## **2.14 References**

- 2.14.1** Previous employment/training history must be checked and satisfactory references provided before an unconditional offer of employment (or other placement in the Board) is made. Boards should ensure that individuals are made aware of this requirement.
- 2.14.2** Information obtained through references should not, for example, be used for the purposes of shortlisting, instead only being used to confirm a recruitment decision. Therefore, where such checks are being undertaken by Boards themselves, it is good practice for references to be sought only after an individual has been advised that they are the preferred candidate for a particular role. However, where references are sought earlier, Boards should make this clear to applicants. They should also always seek the applicant's prior consent before approaching their current employer.

- 2.14.3** Where satisfactory references cannot be provided as required, or references are unsatisfactory, a risk assessment should be undertaken, considering whether, based on the post in question, to offer employment.
- 2.14.4** Where such checks are delegated to an originating organisation, Boards should seek assurance that they have been undertaken to the required standard prior to placement.
- 2.14.5** Gaps in employment/training must be explained and verification sought. While in most cases there will be a simple explanation, it may equally be the case that the individual was out of the country, and potentially therefore requires an overseas criminal record check, or it may mask a period of imprisonment as a result of a criminal conviction.
- 2.14.6** References and application forms should be cross-checked as part of this process.
- 2.14.7** References serve two purposes:
- They allow organisations to check the accuracy of an individual's previous employment and training history; and
  - They provide assurance of an individual's qualifications, integrity and track record.

**For the purposes of this PIN Policy, reference checks are concerned only with the former.**

- 2.14.8** eESS will make the process easier for checking employment details of staff who have already been employed in NHSScotland, such as verifying dates of employment. Where employment has been outside NHSScotland or overseas, then the use of references is critical in establishing employment/training history.
- 2.14.9** Boards should check at least three years of previous employment/training history. Any gaps will need to be carefully explored with the applicant at interview. Ideally Boards should aim to check a period which covers two separate employers (where possible), one of which should be from the applicant's current or most recent employer. Where an individual has been with one employer for three years or more, one reference may be sufficient. Where the applicant has had more than two employers in the preceding three years, Boards should seek additional references if this will help to support the application.

- 2.14.10** Where candidates supply a reference from an employer, they should ensure that such referee is someone within that employing organisation who has authority to provide a formal employment reference. Should candidates provide referee details for someone not in such a position, they should clearly advise the prospective employer that this is the case.
- 2.14.11** Employers must pay special attention to confirming appropriate employer references for appointments to executive and other senior positions. It is up to the employer to determine the most appropriate referees for the position they are offering and the level of checks required. Checking employer references for chief executives and clarifying their reasons for leaving should be the responsibility of the NHS Board chair.
- 2.14.12** References must always be obtained in writing, be signed and dated by the referee, and include the referee's name, position, and company contact details, although it may be necessary to telephone referees to clarify information. Electronic references may be accepted providing the reference is from a bona fide company email address and contains an electronic signature (name and position of the referee, company switchboard number and company address). Boards should consider devising a standard form for employer references, which could help to identify relevant information and minimise the effort involved to prompt a quick response.
- 2.14.13** Boards are required to check that referees are bona fide and references are genuine. Guidance on how to check the authenticity of references provided is set out at Appendix 2 (Annex B).
- 2.14.14** ***Reference Information Requested***
- 2.14.14.1 NHSScotland Boards should seek factual information to confirm the accuracy of the details provided by the candidate on their application form, i.e.:
- The capacity in which the applicant is known to the referee (including whether the applicant is related to the referee) and for how long they have known them; and
  - In the case of employment references, the capacity in which the applicant is/was employed, their dates of employment, salary, a summary of their main duties/responsibilities and, where applicable, their reason for leaving.

2.14.14.2 It is also good practice to ask for details on the applicant's suitability for the post, with reference to a supplied job description, as well as any other relevant comments the referee may wish to make regarding the applicant, although employers should bear in mind that any such comments may be highly subjective.

### **2.14.15 Other Types of Reference**

2.14.15.1 Depending on the individual's circumstances, and proportionate to the role concerned, other types of references may be required.

2.14.15.2 Where an individual has been overseas for a single spell of three months or more, or a cumulative total of six months or more, every effort should be made to obtain a relevant reference from overseas.

The following documentation can be requested as an assurance of time spent overseas:

- Proof of residence for time spent abroad;
- Overseas employer or academic references; or
- References from UK departments and agencies based overseas (for example, the [Foreign and Commonwealth Office \(FCO\)](#), missions, British Council, non-government departments and agencies).

Information on time spent overseas should always be requested early, to prevent unnecessary delays in the recruitment process. Confirmation of dates should be cross referenced with passports, work permits and so on.

Every effort should be made to obtain references from overseas employers or training providers. Boards should ensure that they independently confirm the details of the candidate's previous employer and check reference details in the same way as they would check local references. It is up to the Board to determine the level of checks suitable for the position.

Where an applicant has not been able to provide sufficient documentary evidence of their time spent abroad, employers will need to consider what additional assurances may be gained at interview, or through evidence of other relevant training and experience in the UK.

- 2.14.15.3 Where employer references are not available, two personal references should be obtained from referees of some standing in the community who have known the individual for at least three years (for instance a doctor, lawyer or MP). Family members are not acceptable referees.
- 2.14.15.4 Where an individual has been in full-time education in the last three years, a reference should be obtained from the relevant academic institution.
- 2.14.15.5 Where an individual has served in the Armed Forces or Civil Service during the previous three years, employer's references should be obtained from the relevant service or department.
- 2.14.15.6 Where an individual has been self-employed, evidence should be obtained (for example, from HM Revenue & Customs, bankers, accountants, solicitors, client references, etc.) to confirm that the individual's business was properly conducted and that the applicant's involvement in the business was terminated satisfactorily.
- 2.14.15.7 Where there is a gap in an individual's employment/training history it will be necessary to obtain verification of whatever explanation is given.

## **2.15 Pre Placement Health Clearance**

- 2.15.1** The broad guidance given in this section is underpinned by the more detailed guidance in the [Managing Health at Work PIN Policy](#). In the context of this document, health clearance refers to the process by which individuals commencing work/placement with an NHS Board are cleared to meet the demands of the role in terms of functional fitness and protection of individuals and patients in relation to communicable diseases.
- 2.15.2** Pre placement health clearance enables NHS Boards to ensure that individuals are physically and psychologically capable of performing the tasks that will be required of them without risk to themselves or others.
- 2.15.3** In addition to fulfilling the requirements of the [SGHD Health Clearance Guidance \(HCG\)](#), this process helps NHS Boards to fulfill their legal obligations in relation to:
- Health & Safety*
- In addition to their duty of care towards workers, NHS Boards have a duty, under the [Health & Safety at Work etc. Act 1974](#) to protect others from risks to their health

and safety arising out of, or in connection with, their activities. Individual employees also have duties under this act.

- NHS Boards are required, under the [Control of Substances Hazardous to Health Regulations 2002](#), to assess the risks from exposure to hazardous substances, including biological agents (or pathogens), and to bring into effect measures necessary to protect workers and others who may be exposed from those risks, as far as is reasonably practicable.

#### *Equality*

- NHS Boards are required under the [Equality Act 2010](#) to make reasonable adjustments in relation to an individual with a disability.

**2.15.4** The level of health clearance undertaken will depend upon the nature of work/placement to be carried out.

**2.15.5** However, in all cases, pre placement health clearance is required to have been satisfactorily completed in advance of an individual commencing paid work or other form of unpaid placement within an NHS Board, with the exception of individuals on work experience. Where it is proposed that an individual changes role within the same NHS Board, further health clearance is only required where the new role will involve a significant change of duties/work environment or there has been a significant change in the health status of the individual.

**2.15.6** NHS Boards must ensure that the pre placement health clearance process (as well as any resulting decisions) are based on good occupational health practice and are compliant with legislative obligations, as set out within, but not exclusively limited to, the provisions contained within the [Managing Health at Work PIN Policy](#), [Equality, Diversity & Human Rights PIN Policy](#), [SGHD Health Clearance Guidance \(HCG\)](#) and [Safe Effective Quality Occupational Health Service \(SEQOHS\) standards](#).

#### **2.15.7 Pre Placement Health Clearance Procedure**

**2.15.7.1** The pre placement health clearance process will comprise some of the following:

- Confirmation of the individual's fitness for the work/placement proposed; and

- Confirmation of whether or not the individual has been cleared to the required level for the role to a standard that protects both the patient and individual in terms of communicable disease.

- 2.15.7.1.1 Individuals will be asked to complete a health questionnaire which will be used to inform the clearance process. **They must not be asked to provide this information until after a conditional offer of work/ placement has been made, in order to comply with the Equality Act 2010.**
- 2.15.7.1.2 The relevant line manager within the Board should provide Occupational Health with details of the functional requirements of the proposed role, including psychological requirements.
- 2.15.7.1.3 Occupational Health will then review the completed questionnaire. This will result in the person being declared fit to standard clearance level or advanced clearance level if the role involves Exposure Prone Procedures (EPPs). EPPs are those procedures where there is a risk that injury to the worker may result in exposure of a patient's open tissues to the blood of the worker.
- 2.15.7.1.4 In either case, if the individual has a health condition that is likely to have a significant impact on their ability to undertake the work/proposal, they may be asked to attend Occupational Health.
- 2.15.7.1.5 Occupational Health will advise on any support or adjustments that the individual would require in order to undertake the work/proposal.
- 2.15.7.1.6 As part of the clearance process all staff must be assessed in relation to communicable diseases in line with:
- COSHH assessments related to the proposed role;
  - HCG; and
  - UK Government Department of Health publication [Immunisation against infectious disease - 'The Green Book'](#).
- 2.15.7.2 *Decisions*
- 2.15.7.2.1 Following completion of the pre placement health clearance process, there may be circumstances where the results mean that an unconditional offer of work/proposal cannot be made.

2.15.7.2.2 Such a decision should only be made where Occupational Health advice received suggests that an individual will not be capable of performing the tasks required, or will not be able to do so without risk to themselves or others, and there are no reasonably practicable adjustments which might overcome these concerns (for example staff who cannot be cleared to perform EPPs).

2.15.7.2.3 Decisions in this regard ultimately rest with the responsible manager, who must ensure that:

- The pre placement health clearance process has been completed in full with all relevant information considered;
- Risk assessment has been undertaken in relation to any adjustments required for the post;
- Advice has been sought as appropriate from Occupational Health, Health & Safety and HR (including in relation to reasonable adjustments required in the case of applicants considered to have a 'disability' as defined under the Equality Act 2010);
- The applicant has had the opportunity to discuss issues raised with Occupational Health; and
- Full consideration has been given to the facts of the particular circumstances.

A flowchart outlining the steps detailed above is attached at Appendix 5.

## **2.15.8 Delegated Pre Placement Clearance**

2.15.8.1 Where individuals are not directly engaged by the NHS Board, but instead indirectly via an originating organisation (such as an agency, college/university providing undergraduate healthcare workers including nursing and medical students, or another NHS Board), as with other checks, Boards may delegate responsibility for undertaking pre placement health clearance to that originating organisation.

2.15.8.2 In such cases, however, Boards must ensure that the originating organisation is fully appraised in relation to the standard of clearance required, including the need to ensure that this has been undertaken by a competent Occupational Health service provider, and must be assured that health clearance is being carried out to the required standard.

- 2.15.8.3 Originating organisations must not place individuals within Boards unless pre placement health clearance has been completed to the required standard and the individual deemed suitable for placement. However, it should be noted that both the Board and the originating organisation may have legal obligations, particularly in the case of paid work, in relation to ensuring that disabled individuals are not discriminated against in relation to placement within the organisation, and in relation to the duty to make reasonable adjustments. Boards should seek assurance that originating organisations are complying with their obligations in this regard. Boards should also engage in discussion, where sought by the originating organisation, where it is considered that an individual may be suitable for placement if reasonable adjustments were made. Such discussion should involve representation from HR, Occupational Health and Health & Safety within the Board, as appropriate, in addition to the responsible manager.
- 2.15.8.4 Originating organisations must ensure that copies of relevant pre placement health clearance records are maintained.
- 2.15.8.5 Even where clearance processes are delegated, Boards may additionally at any time require that an individual attend a medical examination by their own Occupational Health service provider as a condition of ongoing placement within the Board.
- 2.15.9 *Pre Placement Health Clearance Records***
- 2.15.9.1 Occupational Health practitioners are obliged ethically and professionally not to release Occupational Health records without the consent of the individual concerned.
- 2.15.9.2 [CEL \(2012\) 18](#) introduced the Occupational Health Clearance Passport for NHSScotland Employees – an electronically stored and transferrable data set within HR systems to assist the pre placement health clearance process for NHSScotland staff, particularly those involved directly in patient care. The Passport holds information on whether an individual has Standard and/or Additional EPP Clearance, when this took place and which Board undertook the clearance. In relation to Standard Clearance, it states how the clearance was achieved. In relation to Additional Clearance, it states whether or not it was obtained from an Identified Validated Sample. At present, more detailed records, such as medical history, immunisation histories

and immunity information on wider communicable diseases will continue to be held separately by individual Board Occupational Health service providers. However, these can be transferred between Boards with explicit individual consent.

### **2.15.10 Further Information**

2.15.10.1 Further information in relation to the pre placement health clearance process, as well as details of the role of Occupational Health and Safety following placement of individuals within NHS Boards, is set out within the [Managing Health at Work PIN Policy](#).

## **2.16 Secondary Work Activity**

**2.16.1** It is recognised that individuals are legally entitled to engage in other work activities, whether paid or unpaid, secondary to their employment within an individual Board<sup>10</sup>.

**2.16.2** However, Boards must be satisfied that such secondary work activities do not:

- Present an actual or potential conflict of interest;
- Have health and safety implications for the employee, their colleagues or patients/service users;
- Have an adverse impact on their ability to maintain a satisfactory level of attendance at work; or
- Have an adverse impact on their ability to perform to the required standards of their role.

**2.16.3** Employees have a personal responsibility to advise of any secondary work activity which they undertake (or intend to undertake) and any subsequent changes to the same. They must additionally ensure that they:

- Make their line manager aware as soon as possible of any potential conflicts of interest;
- Sign an opt out, where they intend that their total average weekly working hours across all work activity may exceed the limit set out within the [Working Time Regulations 1998](#), and local NHS Board policy allows;

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<sup>10</sup> This includes circumstances where an individual holds two contracts of employment within the same Board, each of which is considered to be 'secondary work activity' in relation to the other. It also applies regardless of whether an individual considers their role within the Board to be 'secondary' to a primary contract of employment elsewhere.

- Do not present a health and safety risk to themselves or others (particularly ensuring that they achieve the minimum daily and weekly rest periods, and statutory annual leave entitlement, as set out within the *Working Time Regulations 1998*; and
- Do not allow any secondary work activity to otherwise impact on their ability to maintain a satisfactory level of attendance at work or to maintain required performance standards.

**2.16.4** Line managers must ensure that all existing or prospective employees are provided with a copy of the Board's policy in relation to secondary work activity and that they are made aware of their responsibilities in this regard. They must additionally ensure that:

- Permission to undertake secondary work activity is not unreasonably refused;
- They take immediate action to remove risk where they are made aware of a potential conflict of interest; and
- They review permission to undertake secondary work activity where they believe that it is having a negative impact on the individual's ability to undertake their role within the organisation.

**2.16.5** This section of the PIN Policy should be read alongside the [Management of Employee Conduct PIN Policy](#), [Management of Employee Capability Policy](#) and [Promoting Attendance PIN Policy](#).

**2.16.6** ***Definition of Secondary Work Activity***

2.16.6.1 Any form of activity undertaken (or which an employee plans to undertake), whether paid or unpaid, which is in addition to a contract of employment with the Board.

2.16.6.2 It may involve:

- An additional contract of employment within either the same Board or within another employing organisation;
- Bank or locum work within or outwith the Board;
- Agency work;
- Self-employment;
- Volunteering or unpaid work; or
- Reservist Occupations.

## 2.16.7 **Working Time Regulations**

- 2.16.7.1 If a person works for more than one employer, their total number of hours of work need to be taken into account. If it is likely that, as a result of secondary work activity, the average weekly working hours limit set out in the *Working Time Regulations 1998* may be exceeded, the Board must either take reasonable steps to ensure that the limits are in fact complied with (recognising that this will be more easily achieved where secondary work activity is undertaken within the same or another NHS Board), or, where local Board policy allows, enter into an agreement with the individual that the hours limit should not apply (by asking them to sign an opt-out). This applies in respect of all posts which an individual holds within the Board. It should be noted that there is no NHSScotland-wide policy which prevents employees from being asked by their Board to sign an opt-out of the average weekly working hours limit.
- 2.16.7.2 Individuals do, however, have a duty to ensure that they do not pose a health and safety risk to themselves or others, and as a minimum, they must ensure that they comply with those elements of the *Working Time Regulations 1998* which do not allow them to opt out, namely in relation to daily and weekly rest breaks, and statutory annual leave. This should not be compromised by secondary work activity under any circumstances.
- 2.16.7.3 Failure by an employee to comply with their obligations in this regard may be progressed via Boards' local policies developed in line with the [Management of Employee Conduct PIN Policy](#).

## 2.16.8 **Procedure**

- 2.16.8.1 Existing employees wishing to commence secondary work activity must seek permission from their line manager prior to doing so. Within a reasonable timescale, the line manager must thereafter meet with the employee and advise whether permission will be granted (timescales should be agreed locally by Boards in partnership).
- 2.16.8.2 Before granting permission, the manager should consider
- Any potential conflicts of interest;
  - The *Working Time Regulations 1998*; and
  - The employee's attendance and performance in their role with the Board and the potential impact secondary work activity may have on attendance and performance.

- 2.16.8.3 On a case by case basis, where there are issues of concern, additional information regarding voluntary/unpaid work may be required.
- 2.16.8.4 Decisions taken in relation to secondary work activity must be applied fairly and consistently.
- 2.16.8.5 Prospective employees must similarly advise the Board, following a conditional offer, of any secondary work activity which they intend to continue following appointment.
- 2.16.8.6 Before granting permission to continue such secondary work activity should the individual wish to take up employment with the Board, the manager should consider (and seek advice from HR before offering an unconditional offer if required):
- Any potential conflicts of interest; and
  - The *Working Time Regulations 1998*.
- 2.16.8.7 Permission will be granted on the understanding that the Board reserves the right to withdraw or otherwise amend the terms of that permission with notice.
- 2.16.8.8 Employees dissatisfied with decisions taken may pursue the matter via local grievance procedures.
- 2.16.8.9 A record of the outcome of such a request, including details of any secondary work activity for which permission has been granted must be kept.
- 2.16.8.10 If it is deemed that such secondary work activity is against the interests of the Board, then agreement is likely to be refused.
- 2.16.8.11 It is the employee's responsibility to notify their line manager should the circumstances of any agreed secondary work activity change (e.g. the number of hours/working pattern and any actual or potential conflict of interest which may subsequently arise).
- 2.16.8.12 Where an employee changes their job role or status within the Board, and undertaking the role would conflict with any secondary work activity, the individual may be required to cease that secondary work activity.

## **2.16.9 Undertaking Secondary Work Activity whilst Sick**

- 2.16.9.1 In circumstances where an employee is absent from work due to sickness or is undertaking modified duties (including working pattern) as a result of ill health or as part of their return to work following ill health, they should not normally continue to undertake secondary work activity during such period. This applies for the period in full, including periods in which the employee would not have been expected to be working in their role within the Board.
- 2.16.9.2 This is particularly the case where such secondary work activity is of the same or similar nature to the role from which they are absent, or where it would be detrimental to their recovery.
- 2.16.9.3 Any employee who wishes to continue to undertake secondary work activity in such circumstances must seek permission from their line manager before doing so. Indeed, it may be that such secondary work activity is beneficial to the employee's recovery. Managers should in all cases seek further advice from HR and Occupational Health, as appropriate, before granting permission. It may be that confirmation is additionally required from an individual's GP.
- 2.16.9.4 Failure to comply with the above procedure may result in the matter being progressed via Boards' local policies developed in line with the [Management of Employee Conduct PIN Policy](#). Continuing to undertake or commencing secondary work activity, whilst on sick leave from the Board, may also be considered fraudulent, in which case the matter could also be referred to NHSScotland Counter Fraud Services (CFS), which may result in criminal proceedings being brought against individuals.

## **2.16.10 Attendance/Performance**

- 2.16.10.1 Where capability issues arise in relation to attendance or performance, consideration will be given to any secondary work activity which the employee is undertaking, when managing such issues under Board policies developed in line with the [Promoting Attendance PIN Policy](#) and [Management of Employee Capability PIN Policy](#).
- 2.16.10.2 In such circumstances, permission to continue to undertake secondary work activity may be retracted if it is deemed to have contributed to such attendance/performance concerns.

### **2.16.11 Conflict of Interest**

- 2.16.11.1 All employees have a contractual duty to declare any actual or potential conflict of interest which arises in the course of their placement within an NHS Board.
- 2.16.11.2 The manager should assess the risk of such a potential conflict of interest and whether anything can be put in place to prevent it (e.g. removing the employee from a certain project etc.). However, if this cannot be avoided, permission to undertake such secondary work activity may need to be retracted.
- 2.16.11.3 Failure to comply with the above procedure may result in the matter being progressed via Boards' local policies developed in line with the [Management of Employee Conduct PIN Policy](#).

### **2.16.12 Use of Board Time and Resources**

- 2.16.12.1 Employees must not abuse Board time and resources in relation to secondary work activity. During working hours, they must only undertake work in relation to their employment within the Board. They must never use Board resources for the purposes of supporting secondary work activity (e.g. using Board IT resources) unless permission has been granted to do so. This applies in the case of all forms of secondary work activity, including circumstances in which an individual holds two contracts of employment within one Board.
- 2.16.12.2 Failure to comply with the above procedure may result in the matter being progressed via Boards' local policies developed in line with the [Management of Employee Conduct PIN Policy](#).

### **2.16.13 Suspension**

- 2.16.13.1 Where an individual is suspended from all or part of their duties as a result of capability/conduct concerns, and where it is considered that the individual may present a risk in relation to any known secondary work activity, it may be necessary to notify that other organisation. However, HR advice must always be sought beforehand in order to ensure that such notification would not be in breach of legislation.

## 2.17 Recording the Outcome of Checks

**2.17.1** NHS Boards must record the outcome of any pre and post placement checks in a secure and consistent way, either on paper or electronically, in order to provide an internal audit trail where necessary.

**2.17.2** Such records must be held according to the [Data Protection Act 1998](#), being treated confidentially and circulated only to those entitled to access, either as part of the pre and post placement check process or otherwise following the granting of permission from the individual to whom such records pertain.

**2.17.3** Such records must also be held according to the [Scottish Government Records Management: NHS Code of Practice \(Scotland\) Version 2.1 \(January 2012\)](#). The Code sets out how long records obtained during the recruitment process can and should be retained, and in relation to both successful and unsuccessful applicants for work.

**2.17.4** Copies of documents provided to satisfy checks on identity and on eligibility to work in the UK must be made in a format which cannot be subsequently altered, and signed and dated by the person taking the copy to show it has been certified. The copies of the documents should be kept securely for the duration of the individual's employment and for a further two years after employment has ceased.

In the case of a passport or other travel document, the following parts must be photocopied or scanned:

- The document's front cover and any page containing the holder's personal details;
- Any page that provides details of nationality, their photograph, date of birth, signature, date of expiry or biometric details; and
- Any page containing UK Government endorsements, noting the date of expiry and any relevant UK immigration endorsement which allows the prospective or current employee to do the type of work being offered.

Other documents should be copied in their entirety.

**2.17.5** Information obtained in relation to criminal record checks must be held according to the *Code of Practice in connection with the use of disclosure information and with the functions of registered persons (Scottish Government) (2011 Edition)*. Once a decision has been made as to whether or not to appoint, such information should be kept only for as long as it is required for the purpose for which it was obtained. For roles requiring a Disclosure Scotland check (under the 1997 Act), this will be 90 days after the date on which recruitment or other relevant decisions have been taken (allowing for the resolution of any disputes or complaints). For roles requiring ongoing evidence of PVG Scheme membership (under the 2007 Act), this will be the date an individual ceases to do regulated work for this organisation. During this period, such information should not be retained in an individual's personnel file, instead being kept securely in lockable, non-portable storage containers with access strictly controlled and limited to persons who need to have access to this information in the course of their duties. This information must only be used for the specific purpose for which it was requested and with the full consent of the individual concerned. Section 124 of the 1997 Act and section 66 of the 2007 Act make it clear that it is a criminal offence to share a disclosure certificate or record, or the information on it, with any individual who is not entitled to receive it. However, if an individual freely gives their consent to the sharing of this information, then an offence has not been committed. Once the applicable retention period has elapsed, this information must be destroyed by secure means.

**2.17.6** Similarly, information obtained as part of the pre placement health clearance process should not be retained in an individual's personnel file, instead forming part of an individual's Occupational Health record and being stored separately in a secure place within Occupational Health.

## **2.18 Training**

**2.18.1** To support the fair and consistent implementation of this PIN Policy locally, and given the potential risks to organisations of a failure to undertake checks appropriately, it will be essential for NHSScotland Boards to ensure that those with a responsibility for implementation of resulting local policies have been appropriately trained.

## **2.19 Basis for Evaluation/Indicators of Success**

**2.19.1** Boards must ensure that resulting local policies developed in line with this PIN Policy are subject to ongoing monitoring to ensure that they are being fairly and consistently applied and that the stated principles and values are being met. Such local policies must also be subject to regular review, in partnership, to ensure that any new standards and/or structures are incorporated when necessary and that they remain fit for purpose.

**2.19.2** The following information should be collected and reviewed as part of this monitoring process (although monitoring should not be limited solely to those areas listed):

- Regular audit to ensure that pre and post placement checks are being undertaken satisfactorily to the required standard within the Board (including compliance with requirements around retention and disposal of records);
- Regular audit to ensure that, where checks are delegated to originating organisations, these are similarly being undertaken satisfactorily to the required standard;
- Consistency of approach across the organisation in relation to notifying Disclosure Scotland and/or statutory regulatory bodies in circumstances where concerns arise in relation to staff; and
- Instances identified where issues have arisen in relation to staff and where it is subsequently identified that pre and post placement checks were not carried out appropriately or where there was a failure to appropriately risk assess the results of those checks.

## Appendix 1

### Checks on Different Categories of Individual

The tables below represent **minimum standards** in terms of the pre placement checks to be carried out. However, it is recognised that **additional checks may be required depending on the individual role** (albeit Boards must ensure that such additional checks are fairly and consistently applied).

In the case of those individuals who are not employees of the Board and who come from an originating organisation, these checks may be delegated as appropriate (see below).

<b>Pre Placement Checks Undertaken by NHS Board</b>									
<b>Category of worker</b>	<b>Verification of Identity</b>	<b>Entitlement to Work<sup>13</sup></b>	<b>Criminal Convictions</b>	<b>Qualifications</b>	<b>Language Competency</b>	<b>Professional Registration</b>	<b>References<sup>14</sup></b>	<b>Pre Placement Health Clearance<sup>15</sup></b>	<b>Secondary Work Activity<sup>16</sup></b>
New permanent/ fixed term Board employee	Yes	Yes	Depends on role	Depends on role	Depends on role	Depends on role	Yes	Yes	Yes
Existing permanent/ fixed term employee changing role within Board	Where the pre placement checks required for the new role are the same as those previously required, and where it can be evidenced that those checks have been undertaken satisfactorily, there is no requirement to repeat those checks as part of this further pre placement process (although please note relevant footnotes below).								
Board zero-hours contract worker	Yes	Yes	Depends on role	Depends on role	Depends on role	Depends on role	Yes	Yes	No

<sup>11</sup> In the case of those engaged in paid work, ongoing 'entitlement to work' checks will be required following placement until such times as the individual has indefinite leave to remain and work. Similarly, organisations should ensure that there is no subsequent breach of any restrictions in terms of the type of work an individual can do or the amount of hours they can work.

While no such check is required in the case of volunteers, there is a requirement to check in the case of those involved in unpaid work, the distinction between which may not always be clear.

<sup>12</sup> While references may not be required for the purposes of this PIN (i.e. to check the accuracy of an individual's previous employment and training history), they may still be required to provide assurance of an individual's qualifications, integrity and track record.

<sup>13</sup> While pre placement health clearance may be required in all cases with the exception of individuals on work experience, the extent of the clearance process will depend upon the role.

<sup>14</sup> All have a duty to declare during the pre placement process, and thereafter, any potential or actual conflict of interest.

<b>Pre Placement Checks Potentially Delegated to Originating Organisation</b>									
<b>Category of worker</b>	<b>Verification of Identity</b>	<b>Entitlement to Work<sup>17</sup></b>	<b>Criminal Convictions</b>	<b>Qualifications</b>	<b>Language Competency</b>	<b>Professional Registration</b>	<b>References<sup>18</sup></b>	<b>Pre Placement Health Clearance<sup>19</sup></b>	<b>Secondary Work Activity<sup>20</sup></b>
<i>NHScotland Bank worker</i>	Yes	Yes	Depends on role	Depends on role	Depends on role	Depends on role	Yes	Yes	No
<i>Agency worker</i>	Yes	Yes	Depends on role	Depends on role	Depends on role	Depends on role	Yes	Yes	No
<i>Secondee</i>	Yes	Yes	Depends on role	Depends on role	Depends on role	Depends on role	Yes	Yes	Yes
<i>Volunteer</i>	Yes	No	Depends on role	Depends on role	Depends on role	Depends on role	No	Yes	No
<i>Student on placement</i>	Yes	No	Depends on role	No	No	No	No	Yes	No
<i>Individual on work experience</i>	No	No	No	No	No	No	No	No	No
<i>Individual with honorary contract</i>	Yes	No	Depends on role	Depends on role	Depends on role	Depends on role	Yes	Yes	No

<sup>15</sup> See note 13 above

<sup>16</sup> See note 14 above

<sup>17</sup> See note 15 above

<sup>18</sup> See note 16 above

## Appendix 2

### **Annex A: List of Acceptable Documentation for Verification of Identity**

Documents marked with \* must be dated within the last 3 months (unless there is a good reason for it not to be – e.g. clear evidence that the person was not living in the UK for three months or more). These documents must contain the name and address of the applicant.

Documents marked with \*\* must be dated within the last 12 months.

#### ***Acceptable photographic personal identification:***

- UK (Channel Islands, Isle of Man or Irish) passport or EU/other nationalities passport.
- Passports of non-EU nationals, containing UK stamps, a visa or a UK residence permit showing the immigration status of the holder in the UK.
- UK full or provisional photo-card driving licence (must include paper counterpart) or an EU/other nationalities full photo-card driving licence (providing that the person checking is confident that non-UK photo-card driving licence are bona fide).
- ID cards carrying the PASS accreditation logo (UK) for example a UK Citizen ID card. This card can be applied for by residents of the UK and is verifiable with similar security marks to passports and driving licences.
- An EU national ID card and/or other valid documentation relating to immigration status and permission to work – a current Biometric Resident Permit (formerly the Identity Card for Foreign Nationals) is acceptable.
- A HM forces photo-ID card is acceptable but employers should bear in mind that such cards must be surrendered upon leaving the forces so only those individuals currently in the forces will hold such a card.

**Acceptable documents for confirmation of address include:**

- Utility bill (gas, water, electricity or phone), or a certificate from a utility supplier confirming the arrangement to pay for the services on pre-payment terms at a fixed address. More than one utility bill may be accepted if these are from two different suppliers and utility bills in joint names are also permissible.\*
- Local authority tax bill (i.e. council tax).\*\*
- UK full or provisional photo-card driving licence (must include paper counterpart); or a full old-style paper driving licence (if not already presented as a personal ID document). Old style provisional driving licences are not acceptable.
- Most recent HM Revenue & Customs tax notification (i.e. tax assessment, statement of account, notice of coding). A P45 or P60 is not acceptable.\*\*
- Financial statement (e.g. bank, building society, credit card or credit union statement) containing current address.\*
- Mortgage statement from a recognised lender.\*\*
- Local council rent card or tenancy agreement.\*
- Benefit statement, book or card; or original notification letter from Department of Work and Pensions (DWP) confirming the rights to benefit (e.g. child allowance, pension).\*\*
- Confirmation from an electoral register search that a person of that name lives at the claimed address.\*

**Acceptable non-photographic proof of personal identification documents:**

- Full birth certificate (UK & Channel Islands) issued at the time of birth, including those issued by UK authorities overseas, such as Embassies, High Commissions and HM Forces.
- Full birth certificate (UK & Channel Islands) issued after the time of birth by the General Register Office/relevant authority, for example, Registrars.
- UK full old-style paper driving licence. Old-style provisional driving licences are not acceptable.

- Residence permit issued by the Home Office to EU nationals on inspection of own-country passport.
- Adoption certificate.
- Marriage/civil partnership certificate.
- Divorce/annulment or civil partnership dissolution papers.
- Deed poll certificate.
- Police registration document.
- Certification of employment in HM Forces.
- Benefit statement, book or card, original notification letter from the Department of Work and Pensions (DWP) confirming legal right to benefit (e.g. child allowance, pension).<sup>\*\*</sup>
- Most recent tax notification from HM Revenue and Customs (i.e. tax assessment, statement of account, notice of coding, P45 or P60 document).<sup>\*\*</sup>
- UK firearms certificate.
- Grant letter or student loan agreement from a Local Education Authority.

***When appointing someone who has recently left school or further education, in addition to photographic personal identification, employers should ask for at least one of the listed documents below as sufficient proof of their identity:***

- Full birth certificate (UK & Channel Islands) issued at the time of birth, including those issued by UK authorities overseas, such as Embassies, High Commissions and HM Forces.
- Full birth certificate (UK & Channel Islands) issued after the time of birth by the General Register Office/relevant authority, for example, Registrars.
- National Insurance (NI) number card or proof of issue of an NI number.
- A letter from their Head Teacher or College Principal can be requested, verifying their name and any other relevant information, for example, address or date of birth.

***If the applicant has changed their name recently & cannot provide ID documents in their own name, employers must only accept identity documents in the applicant's previous name where they are able to provide documentary evidence of the recent name change because of:***

- Marriage/civil partnership (i.e. marriage/civil partnership certificate).
- Divorce/civil partnership dissolution (i.e. decree absolute/civil partnership dissolution certificate).
- Deed poll (i.e. deed poll certificate).

## Appendix 2

### **Annex B: Good Practice Guidance on Checking the Validity of Documentation**

#### ***General***

- Check to ensure that documents are genuine and have not been tampered with.
- Check to ensure that the documents belong to the individual.
- Check that any photographs, where available, are consistent with the appearance of the individual.
- Check the biographical details (i.e. name, and, where available, date of birth) are consistent across documents.
- In the case of date of birth details, check that these correspond with the appearance of the individual.
- If the individual produces two documents which have different names, ask for a further document to explain the reason for this (e.g. a marriage certificate, divorce decree absolute, deed poll document or statutory declaration).

#### ***Specific Checks***

##### *Passports (UK or overseas)*

- Check the general quality and condition. Look out for page substitution, incorrect numbering of pages, damage to the cover or spine of the document, or poor paper or print quality.
- Check that print is clear and even – print processes are deliberately complex on genuine documents.
- Check wording, issue and expiry dates – spelling mistakes are common in forged or counterfeit documents, especially on stamps and visas. Forgers often only alter the expiry date so ensure this corresponds with the issue date.
- Check for damage – accidental damage is often used to conceal tampering so treat any excessive damage with caution.

- Check photographs for size, signs of damage or for excessive glue – this could indicate photo substitution. An excessively large photograph may be hiding another photograph underneath. There should also be an embossed strip embedded into the laminate, which will catch a portion of the photograph.
- Check that watermarks can be clearly seen when holding the document up to the light.
- Check the name of the country of origin. Unofficial travel documents in the name of non-existent countries, or countries no longer known by their original name, are in circulation.

#### *Visas*

- Check for signs of alteration to the passport number or personal and issue details. Make sure details correspond with information in the passport.
- Check that security features, such as watermarks, are intact.
- Check image on the visa for signs of substitution.
- Check wording for evidence of alteration or spelling mistakes.

#### *Biometric Residence Permits*

- Check the permit number on the front of the card in the top right corner – it should start with two letters followed by seven numbers. The permit number should not be raised; it should feel smooth when you run your fingers across it.
- Photographs will always be in greyscale.
- Check the security features at the back of the permit. This should be a raised design incorporating the four national flowers of the UK, which can be seen clearly by shining a light across the card.
- The permit should be the size of a credit card; it will feel slightly thicker than a driver's licence and will have a distinctive sound when flicked.
- If you have any concerns about the validity of a biometric residence permit, or to access the online checking service, contact [UKBA](#).

*Photo-card driving licences*

- Examine the licence carefully, looking for any damage or adjustments.
- Ensure that the printed details have not been changed.
- Check that watermarks and security features are intact.
- Photographs will always be in greyscale.
- Check that the paper counterpart document is printed on both sides, and that details correspond with those on the photo-card, and compare the signature.
- Ensure the valid-to date is the day before the owner's 70<sup>th</sup> birthday (if the owner is over 70 this does not apply).

*UK CitizenCard photo-card*

- Check the card has the PASS (Proof of Age Standards Scheme) hologram. This signifies that the card is genuine and is recognised as valid ID under the law.
- Every CitizenCard displays UV (ultraviolet) markings in the form of two '100% proof' logos.

*Birth certificates*

- Check the quality of paper used; genuine certificates use a high grade.
- When the document is held up to the light there should be a visible watermark.
- Any signs of smoothness on the surface might indicate that original text has been washed or rubbed away.
- There should be no signs of tampering, changes using liquid paper, overwriting or spelling mistakes.
- Ensure that the date of birth and registration/issue dates are provided.

*Other supporting verification of identify documentation*

- Check that documents have not been printed off from online bills or statements – most companies will provide hard copies to customers on request.
- Check that the document is on original quality letterhead paper. Pay particular attention to the company logo, as logos lose their quality when photocopied or scanned.

- Check for even folds on original documents – the vast majority of bills are machine folded before being sent to customers.

#### *Qualifications*

- Contact the awarding body directly, where possible, to confirm the applicant's attendance, course details and grade awarded.
- Where individuals have obtained qualifications from institutions outwith the UK, check that this qualification exists, that it is equivalent to the stated UK qualification and that the prospective employee does, in fact, hold the qualification. These checks should be carried out directly with the awarding institution where possible. Where this is not possible, you should seek advice from the relevant country's UK Embassy, Consulate or High Commission. The [National Recognition Information Centre for the United Kingdom \(UK NARIC\)](#) provides a service whereby such qualifications can be compared to the UK's qualification frameworks.

#### *References*

- Check that the organisation exists (using the phone book, internet or business directories).
- Phone or email the HR department to verify that employment dates and information are correct.
- All hard copy references should be on headed company paper (or include the referee's company stamp where a standardised form is used) or, where emailed, should be from an authenticated company email address.

## Appendix 3

### **Annex A: Statutory Regulatory Bodies Operating in Scotland and the Professions they Regulate**

There are eight Regulatory Bodies responsible for regulating healthcare professionals across the UK. These are listed below along with the professions they regulate.

Regulatory Body	Contact Details	Professions Regulated	Language Requirements for international graduates (non-EEA)
General Chiropractic Council	44 Wicklow Street London WC1X 9HL <a href="http://www.gcc-uk.org">www.gcc-uk.org</a> 0207 713 5155	<ul style="list-style-type: none"> <li>• Chiropractors</li> </ul>	There is no separate language test, but language communications skills are part of core competency test at point of registration.
General Dental Council	37 Wimpole Street London W1G 8DQ <a href="http://www.gdc-uk.org">www.gdc-uk.org</a> 0845 222 4141	<ul style="list-style-type: none"> <li>• Dentists</li> <li>• Dental nurses</li> <li>• Dental technicians</li> <li>• Clinical dental technicians</li> <li>• Dental hygienists</li> <li>• Dental therapists</li> <li>• Orthodontic therapists</li> </ul>	For the Overseas Registration Examination, the GDC requires a minimum overall score of 7.0 and with a score of no less than 6.5 in any of the individual sections, in the academic International English Language Testing System (IELTS) test. The IELTS Test Report Form must be no more than two years old when submitted.
General Medical Council	Jackson's Entry Edinburgh EH8 8PJ <a href="http://www.gmc-uk.org">www.gmc-uk.org</a> 0131 525 8700	<ul style="list-style-type: none"> <li>• Medical practitioners (doctors)</li> </ul>	Requires an IELTS Academic overall score of 7.0, with minimum scores of 7.0 in speaking and 7.0 in listening, reading and writing. These scores must be achieved in a single sitting of the test. The IELTS Test Report Form must be no more than two years old when submitted. Under certain circumstances the GMC will consider evidence other than an IELTS certificate. Further information can be found on the GMC website.
General Optical Council	41 Harley Street London W1G 8DJ <a href="http://www.optical.org">www.optical.org</a> 0207 580 3898	<ul style="list-style-type: none"> <li>• Optometrists</li> <li>• Dispensing opticians</li> <li>• Student opticians</li> <li>• Optical businesses</li> </ul>	A score of at least 7.0 in the IELTS. Additionally, no individual section should be scored less than 6.0 - except for 'speaking' where the minimum score required is 7.0.

General Osteopathic Council	176 Tower Bridge Road London SE1 3LU <a href="http://www.osteopathy.org.uk">www.osteopathy.org.uk</a> 0207 357 6655	• Osteopaths	The preferred testing system of the GOsC is the IELTS academic test. A score of 7.0 is required with no element lower than 7.0. Other tests are acceptable and these details can be accessed by contacting GOsC.
General Pharmaceutical Council	129 Lambeth Rd London SE1 7BT <a href="http://www.pharmacyregulation.org">www.pharmacyregulation.org</a> 0203 365 3400	<ul style="list-style-type: none"> <li>• Pharmacists</li> <li>• Pharmacy technicians</li> </ul>	Applicants (including UK nationals but excluding EEA and Swiss Nationals) who have qualified overseas will only be considered eligible to apply for the Overseas Pharmacists' Assessment Programme (OSPAP) where they have passed an IELTS test. The GhPC requires a minimum overall score of 7.0 in the Academic IELTS with a minimum of 7.0 in every category at the same sitting of the test. The IELTS Test Report Form must be no more than two years old when submitted with a complete OSPAP application.

Health and Care Professions Council	<p>184 Kennington Park Road London SE11 4BU <a href="http://www.hcpc-uk.org/">www.hcpc-uk.org/</a> 0845 300 4472</p>	<ul style="list-style-type: none"> <li>• Arts Therapists</li> <li>• Biomedical Scientists</li> <li>• Chiroprodists</li> <li>• Hearing Aid Dispensers</li> <li>• Podiatrists</li> <li>• Clinical Scientists</li> <li>• Dieticians</li> <li>• Occupational Therapists</li> <li>• Operating Department Practitioners</li> <li>• Orthoptists</li> <li>• Paramedics</li> <li>• Physiotherapists</li> <li>• Practitioner psychologists</li> <li>• Prosthetists</li> <li>• Orthotists</li> <li>• Radiographers</li> <li>• Social Workers</li> <li>• Speech &amp; Language Therapists</li> </ul>	<p>The English language proficiency standard required by the HPC is IELTS score 7.0 with no single score less than 6.5, or the equivalent. This applies to all HPC professions other than speech and language therapy, for which an IELTS score of 8.0 is required (with no single score less than 7.5).</p>
Nursing and Midwifery Council	<p>23 Portland Place London W1B 1PZ <a href="http://www.nmc-uk.org">www.nmc-uk.org</a> 0207 333 9333</p>	<ul style="list-style-type: none"> <li>• Nurses</li> <li>• Midwives</li> </ul>	<p>IELTS required score for overseas applicants is 7.0. The IELTS Test Report Form must be no more than two years old when submitted.</p>

## Appendix 3

### Annex B: Thresholds for Referral to Statutory Regulatory Bodies

[This guidance is adapted from a paper prepared by the Scottish Government in October 2010 in partnership with the General Medical Council, Nursing & Midwifery Council, Health Professions Council, General Dental Council and the General Pharmaceutical Council.]

#### **Introduction**

The overriding obligation on the part of the regulators of the health and social care professions is to protect the public. It is therefore sometimes necessary to take action where required in order to protect patients, ensure their safety, or where it is in the public interest. A statutory regulatory body (RB) can act on any information it receives, from any source, where concerns have been raised about a registered professional's fitness to practise. However, in some cases, it is clear from the outset that there is no need for the RB to investigate because the complaint concerns a matter or matters that do not raise an issue of impaired fitness to practise (e.g. minor motoring offences not involving drugs or alcohol; or *minor* clinical matters (e.g. complaints about the cost of treatment)). These cases are closed by the regulatory body without any further action.

There are, however, other complaints that may require communication with employers to ensure that they have no concerns about the practitioner<sup>19</sup>. In addition, there are cases that require *full investigation* by the regulatory body and **it is these cases that will be the focus of this guidance.**

#### **Cases that require full investigation**

Cases that require a full investigation into the practitioner's fitness to practise, such as those relating to conduct, will, in some cases, involve an assessment of the practitioner's health, character, competence or performance. A panel of the Investigating Committee will usually meet and, following its deliberations, reach a decision regarding whether the practitioner should be referred for a full

<sup>19</sup> The term "practitioner" is used in this paper to refer to a healthcare professional who is registered with at least one of the eight UK professional regulatory bodies, i.e. GMC, NMC, HCPC, GDC, GPhC, GOC, GCC, GOSc or a social care professional registered with the Scottish Social Services Council.

Fitness to Practise hearing<sup>20</sup>. A practitioner's fitness to practise **may** be impaired by one or more of the following:

- Misconduct
- Deficient performance/lack of competence<sup>21</sup>
- A criminal conviction
- Physical or mental ill-health

The Panel's decision may also be influenced by a decision taken by another health professional regulatory body that the practitioner's fitness to practise is impaired, or a barring decision taken by a barring authority in England or Scotland.

### ***Cases where the Regulatory Body is likely to take action***

In some cases, allegations about a practitioner are so serious that, if proven, they are likely to result in the RB taking action regarding the practitioner's registration. These cases tend to fall into the following four categories:

- Sexual assault or indecency;
- Violence;
- Improper sexual/emotional relationship with a patient or someone close to the patient; and
- Dishonesty.

Any allegation falling into one of these four categories is likely to meet the threshold for referral to the RB. For examples of allegations relating to potential areas of concern see below. Allegations relating to any one of the four categories will always be of interest to the RB, although other factors, such as those outlined below, may also apply

- The practitioner's performance has deviated from the RB's code of conduct, performance and ethics and, as a result, has harmed patients or the public or put them at risk of harm.

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<sup>20</sup> The exact process followed can differ across the regulatory bodies but will follow this general pattern.

<sup>21</sup> The language used may differ from one regulatory body to another but both terms mean similar things.

- Attempts to improve the practitioner's performance locally have failed, and the employer has identified an unresolved risk to patient safety.
- The practitioner, about whom the employer has developed significant concerns, leaves employment<sup>22</sup> to take up work elsewhere.
- The practitioner has shown a deliberate or reckless disregard for clinical responsibilities towards patients.
- The practitioner has abused a patient's trust, not respected their autonomy, or has failed to acknowledge and respect their fundamental rights.
- The practitioner has behaved dishonestly, fraudulently or in a way that is designed to mislead or harm others.
- The practitioner's behaviour was such that public confidence in the relevant healthcare profession might generally be undermined if the RB did not take action.
- The practitioner's health compromises patient safety, and the practitioner lacks insight into the need to pursue advice or treatment and to restrict their sphere of practice.

### **Summary**

If a practitioner working for/with you appears to have reached, or be close to reaching, **any** of the thresholds set out above the RB should be contacted for advice on how to proceed.

### **Further information**

More detailed guidance relating to the standards expected of healthcare professionals, case examination and investigation processes, fitness to practise panels, and the sanctions that may be applied is available on the websites of the various regulatory bodies.

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<sup>22</sup> Where an employer has concerns about a practitioner's fitness to practise these should be conveyed to the relevant regulatory body. This should apply even when the practitioner is leaving that employment to take up work elsewhere, including as a locum or as an independent practitioner.

Potential areas of concern	Examples of allegations
Criminal conviction or caution	<ul style="list-style-type: none"> <li>• Child pornography</li> <li>• Theft</li> <li>• Financial fraud</li> <li>• Possession of illegal substances</li> <li>• Child abuse or any other abuse</li> <li>• Physical violence</li> <li>• Issues where drug or alcohol abuse may be the cause of the offence</li> </ul>
Dishonesty	<ul style="list-style-type: none"> <li>• Falsifying records</li> <li>• Fraudulent applications for employment</li> <li>• NHS fraud that is below the threshold for prosecution (e.g. falsifying expenses [not cost effective to prosecute])</li> </ul>
Drug or alcohol abuse	<ul style="list-style-type: none"> <li>• Drink driving</li> <li>• Alcohol consumption that affects clinical work or environment</li> <li>• Dealing, possessing or misusing drugs even if there are no associated legal proceedings [this includes the abuse of controlled drugs, prescription drugs and other substances – whether for self-medication or recreational use]</li> </ul>
Aggressive, violent or threatening behaviour	<ul style="list-style-type: none"> <li>• Assault</li> <li>• Physical violence</li> <li>• Bullying</li> <li>• Physical, emotional, sexual or other forms of abuse</li> <li>• Sexual assault</li> <li>• Harassment and intimidation</li> </ul>
Persistent inappropriate attitudes, which affect patient safety or public confidence in the profession	<ul style="list-style-type: none"> <li>• Not committed to work</li> <li>• Neglect of duties or tasks, including administrative tasks or record keeping</li> <li>• Poor time management</li> <li>• Non-attendance</li> </ul>

Inappropriate behaviour	<ul style="list-style-type: none"> <li>• Showing lack of respect, and failing to treat patients with dignity</li> <li>• Inappropriate relationships, including improper sexual/emotional relationship with a patient or someone close to the patient</li> </ul>
Breach of sexual boundaries	<ul style="list-style-type: none"> <li>• Inappropriate examinations or failure to maintain appropriate boundaries</li> <li>• Sexual assault or indecency</li> </ul>
Unprofessional behaviour or attitudes	<ul style="list-style-type: none"> <li>• Breach of confidentiality</li> <li>• Misleading patients about their care or treatment</li> <li>• Failure to obtain proper consent</li> <li>• Sexual harassment</li> <li>• Persistent rudeness to patients, colleagues or others</li> <li>• Unlawful discrimination</li> </ul>
Health concerns, including mental health issues	<ul style="list-style-type: none"> <li>• Failure of health professional to seek medical advice or other support</li> <li>• Refusal to follow medical advice or care plan including monitoring/reviews</li> <li>• Failure to recognise limits and abilities</li> </ul>

## Appendix 4

### Referrals to Disclosure Scotland

- The 2007 Act aims to provide a robust system by which unsuitable people are prevented from doing regulated work with children or protected adults, and by which people who become unsuitable are identified. For it to work effectively, it is necessary for organisations to pass on information to Disclosure Scotland that indicates an individual may be unsuitable to do regulated work so that it can be properly evaluated and appropriate action taken.
- The process of providing such information to Disclosure Scotland is called 'making a referral'. The 2007 Act places a duty on organisations and personnel suppliers to make a referral when certain criteria are met. Broadly speaking, the criteria are that: (a) an individual doing regulated work has done something to harm a child or protected adult and (b) the impact is so serious that the organisation has (or would) permanently remove the individual from regulated work. The first of these criteria is known as the referral ground.
- The 2007 Act gives organisations a power to make referrals where the criteria were met before the Act came into force.
- Making a referral is very important. Failure to refer an individual may mean that an individual who is unsuitable to do regulated work does not get barred from doing that type of work and can go on and harm other vulnerable people in other settings.

#### **Referral grounds**

- The PVG Scheme seeks to prevent vulnerable groups being harmed by those people who work with them. Sometimes an individual doing regulated work can become unsuitable to continue to do this work and this may be indicated by their conduct at work or outside of work. This should trigger a referral.
- A prerequisite for any body to make a referral is that at least one of the referral grounds set out at section 2 of the 2007 Act has been met. First of all, the individual must:

- Be doing regulated work;
- Have been doing regulated work; or
- Have been offered or supplied for regulated work.
- Then the individual must have done something harmful or inappropriate in respect of a child or protected adult. But note that the harmful or inappropriate behaviour must correspond with the type of regulated work the individual does. For example, a schoolteacher (doing regulated work with children) who harms a protected adult does not meet the referral grounds. After a referral is made, Disclosure Scotland may place the individual under consideration for listing for either or both lists, irrespective of how the referral grounds are met. Therefore, it is not for organisations to “recommend” consideration for listing on one or other list as part of the referral process.
- The harmful or inappropriate behaviour does not have to have taken place in the workplace, or be connected with that person’s work in any way. For example, someone who has taken inappropriate pictures of children on a beach or has stolen from an elderly and frail neighbour would meet the grounds for referral if the individual was doing regulated work with children or regulated work with adults, respectively.
- The referral grounds for those doing regulated work with children and referral grounds for those doing regulated work with adults mirror each other. The subject of the referral must have done one or more of the following:
  - Harmed a child or protected adult;
  - Placed a child or protected adult at risk of harm;
  - Engaged in inappropriate conduct involving pornography;
  - Engaged in inappropriate conduct of a sexual nature involving a child or protected adult; or
  - Given inappropriate medical treatment to a child or protected adult.
- Concerns about a person’s professional competence, which do not constitute a referral ground, should be addressed by the relevant professional regulatory body.

The regulatory body will decide whether the person is fit to continue doing that specific type of work with a particular client group.

### **Meaning of 'harm'**

- The meaning of the word harm is key to the first two grounds for referral. Harm includes:
  - Physical harm;
  - Psychological harm (for example: causing fear, alarm or distress); or
  - Unlawful conduct which appropriates or adversely affects another person's property, rights or interests (for example: theft, fraud, embezzlement or extortion).
- The Act also provides a meaning for 'risk of harm' which includes:
  - Attempting to harm another;
  - Trying to get someone else to harm another;
  - Encouraging someone to harm themselves; or
  - Conduct otherwise causing, or likely to cause, another to be harmed.
- When considering the terms 'harm' and 'risk of harm', it is important for individuals and employers to develop an understanding of what sort of actions might result in someone being harmed, or placed at risk of harm. Examples of harmful behaviours include:
  - Emotional abuse, perhaps by controlling a child with extreme verbal threats;
  - Neglecting a person's needs, for example by inappropriate feeding or failing to provide appropriate sanitation;
  - Inappropriate physical restraint;
  - Failing to attend to whatever health and safety requirements may be in force; or
  - Supplying illegal or unauthorised drugs.
- While some of these examples might in the first instance lead to questions of professional competence

being raised, they could lead to disciplinary action being taken. The outcome from that action might require a referral to be made to Disclosure Scotland.

- This is not an exhaustive list of things that may cause harm or place someone at risk of harm. Organisations may wish to consider how harmful behaviour may be guarded against in their own workplace policies and procedures. This can be done, for example, by making awareness of child and adult protection policies part of the induction of new staff to your organisation.

### ***Duties on organisations to refer***

- If, as a result of any of the referral grounds being met, an organisation dismisses an individual who was doing regulated work or transfers them to other duties that do not involve that type of regulated work, the organisation must make a referral. If the individual concerned has stopped doing regulated work for some other reason, the organisation must make a referral if it would or might have dismissed or transferred the individual on the referral ground. The duty to make a referral in these circumstances applies whether or not the individual is a member of the PVG Scheme.
- The same duty applies if the individual stops doing regulated work and the organisation subsequently becomes aware of information which it was unaware of when the individual stopped doing regulated work. If the organisation considers that, if it had been aware of that information at the time and the individual had not stopped doing regulated work, it would or might have dismissed the individual on the referral ground, then it must make a referral.
- The referral process to Disclosure Scotland is entirely separate from any dispute with the individual as to whether the dismissal was fair or otherwise. Even if a dismissal is challenged by the individual, the referral must still be made to Disclosure Scotland. Any findings of fact by an employment tribunal cannot be disputed as part of a consideration for listing. Sometimes it will be necessary for a consideration for listing case to be held pending the outcome of such proceedings.
- The conjunction of both the referral ground being met and the action by the organisation to remove permanently the individual from regulated work ensure

that trivial matters cannot be the subject of a referral. Harm covers such a broad range of incidents from flicking food at somebody to a serious violent assault. But the only harm which can lead to a referral is that which the organisation considers to be so serious that they have dismissed (or would dismiss) the individual on that basis.

- The intention is that a referral should be triggered by an organisation permanently removing an individual from regulated work. Provision is made to accommodate referral grounds being identified after the individual has otherwise stopped doing regulated work. A temporary removal, such a suspension or temporary transfer, should not lead to a referral.
- Organisations must make referrals when the criteria are met after the introduction of the PVG Scheme. But it does not oblige them to make a referral when the criteria were met before the introduction of the PVG Scheme. However, it does give organisations the *power* to make a referral about a historical incident if they wish to do so. For example, employers may be aware of situations they dealt with historically, before it was possible to make referrals to the children's or adults' list, which, if such an incident happened now, would result in the employer making a referral to Disclosure Scotland. If an employer decides to make such a referral, the employer would need to provide as much information as possible. There is no requirement that they inform the individual but it may be courteous to do so. The employer will not commit an offence for failing to refer an individual who was subject to disciplinary action before the PVG Scheme started.
- It is for organisations to decide who within the organisation should be responsible for compiling a referral and being the point of contact with Disclosure Scotland throughout the process. In cases where the organisation is a registered body, the contact person could be the lead signatory or a countersignatory but it does not have to be. It could be another senior official in the organisation.
- Making a referral does not in any way take away the need to involve the police if criminal behaviour is suspected. That could happen well in advance of the referral to Disclosure Scotland being made.

### ***Failure to refer***

It is an offence not to make a referral within three months of the criteria for referral being met. Failure to refer can result in a fine and a prison sentence of up to five years. Individuals within organisations may be prosecuted, alongside the organisation itself, if it can be demonstrated that the offence was committed with their consent, connivance or through their negligence.

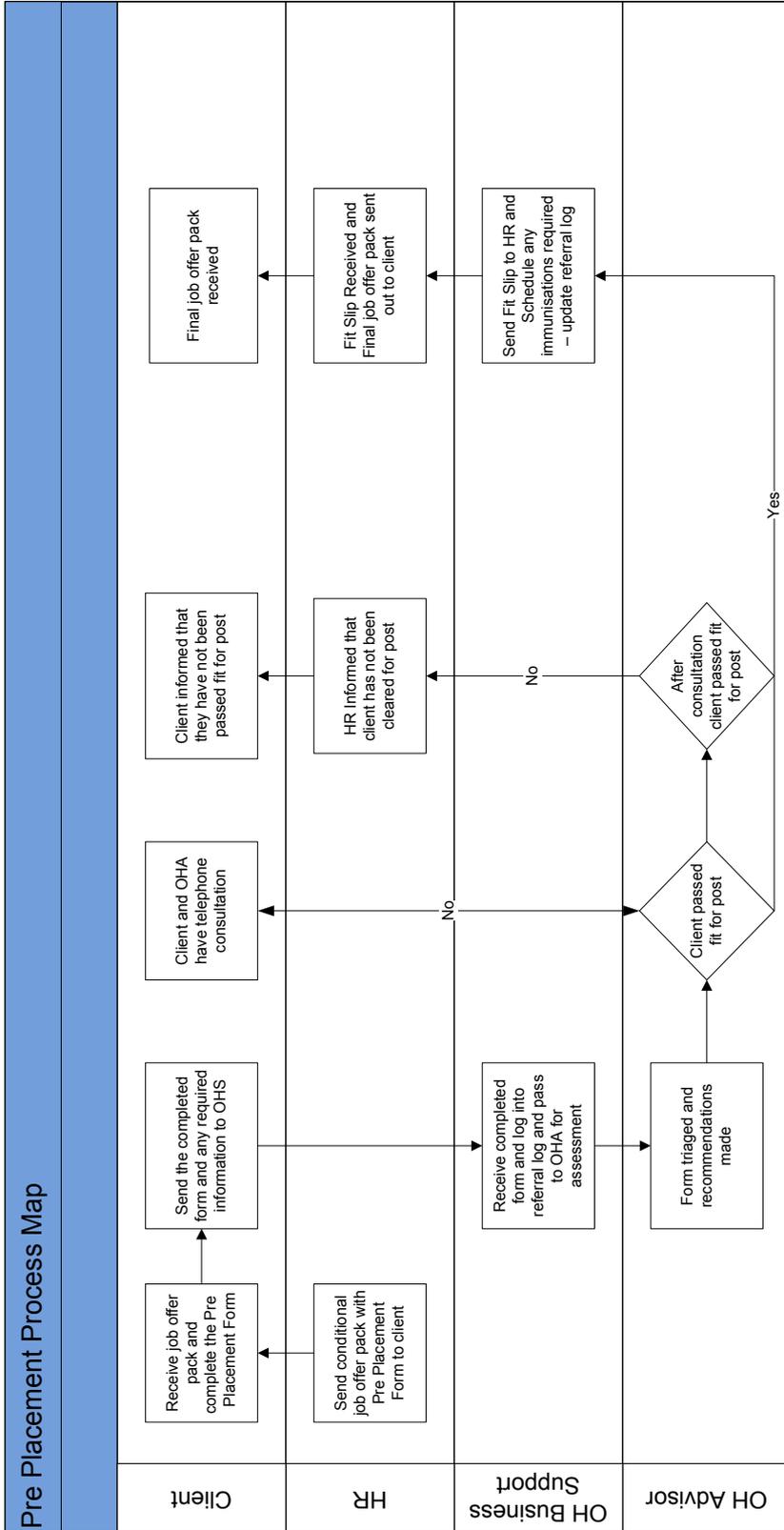
### ***Referral information***

- The information which must be submitted to make a referral is set out in regulations. Organisations or bodies making referrals are only required to supply the required information which they hold; they do not have to make further enquiries to find the information if they do not already hold it. Disclosure Scotland provides a standard referral form, along with guidelines for its completion, to assist organisations in ensuring they include all necessary information when making a referral. It is not mandatory to use this form although it will make the referral process easier for both the organisation and Disclosure Scotland if it is used.
- The referral form includes space for all the prescribed information (which organisations must provide if they hold it) and space for other information (which is entirely discretionary). Providing this latter information is likely to help with the consideration process and reduce the need to request additional information from the referring organisation.
- As they contain sensitive personal information, referrals should not be sent to the generic Disclosure Scotland postal address. Instead, referrals should be sent to a dedicated address (details of which will be available on the Disclosure Scotland website).
- In brief, the information which must be submitted with any referral includes identity details relating to the individual; details about the referral ground; contact details for the referring organisation; details of the regulated work done by the individual; details of any relationship between the child or protected adult involved; and details of any action taken by the referring organisation.

- Section 41 of the 2007 Act provides protection from actions for damages for any organisation providing referral information to Disclosure Scotland in good faith. This means, for example, that a teacher who loses their job after being listed cannot sue any organisation who made a referral or provided supporting information for the consideration for listing process. It does not matter whether or not the decision to list is upheld on appeal. However, an organisation that, knowingly or recklessly, provides untrue or misleading information to Disclosure Scotland is not protected from actions for damages. For example, an employer who makes malicious claims about an employee who has been dismissed in support of a referral is not protected.

# Appendix 5

## Pre Placement Health Clearance Flowchart



## Appendix 6

### PIN Policy Review Group

Members:	Lisa Cameron	UNITE
	Joyce Davison	Assistant Secretary, BMA
	Kirsten Frew	HR Workforce Planning and Development Manager, NHS 24
	Fiona Ireland	Senior Manager, NHS Lothian Staff Bank
	Linda Lynch	Head of Recruitment & Development, NHS 24
	Alan Milbourne	Policy Manager, Scottish Government
	Darren Paterson	Staff Governance Associate, Scottish Government
	Kevin Reith	Learning & OD Manager, NHS 24
	Raymond Rose	Head of Medical Staffing, NHS Greater Glasgow & Clyde
	Sheila Rosher	Head of Resourcing, NHS Ayrshire & Arran
	Gordon Stephen	UNITE
	Aileen Stewart	UNISON