



KMS 600 Appendix N – Determining Whether a Criminal Record is Relevant

Created by:	HR Manager	Review date:	July 2020
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KINGSTON MAURWARD SYSTEM
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The following gives advice on deciding whether a person’s criminal record is relevant. This information is based on an extract from Appendix 9 of the Safeguarding Children and Safer Recruitment in Education document. Whilst this document has been replaced by Keeping Children Safe in Education (2015), the information outlined here remains relevant and is also in line with advice from the CIPD (Chartered Institute of Personnel and Development).

How does an employer decide whether a person’s criminal record is relevant?

An applicant’s suitability should be judged in the light of the results of all the relevant pre-appointment checks carried out on him or her. The fact that a person has a criminal record does not automatically make him or her unsuitable for work with children. Employers, in conjunction with the registered body or person authorised to receive disclosure information, must make a judgement about suitability, taking into account only those offences which may be relevant to the particular job or situation in question. In deciding the relevance of convictions a number of points should be considered:

i. **the nature of the offence:** In general, convictions for sexual, violent or drug offences will be particularly strong contra-indications for work with children;

ii. **the nature of the appointment:** Often the nature of the appointment will help to assess the relevance of the conviction. For example, serious sexual, violent, drug or drink offences would give rise to particular concern where a position was one of providing care. Driving or drink offences would be relevant in situations involving transport of children;

iii. **the age of the offence:** Offences which took place many years in the past may often have less relevance than recent offences. However, convictions for serious violent or sexual offences or serious offences involving substance abuse are more likely to give cause for continuing concern than, for instance, an isolated case of dishonesty committed when the person was young. The potential for rehabilitation must be weighed against the need to protect children;

iv. **the frequency of the offence:** A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. Anyone who is barred from work in the education sector on grounds that he or she is unsuitable to be employed as a teacher or worker with children and young persons, will also be disqualified from all work with children in a regulated position as set out in section 36 of the Criminal Justice and Court Services Act 2000. It is an offence for a disqualified person to apply for, offer to do, accept or do any work in any of the regulated positions set out in the Act (Appendix 12). It is also an offence for an employer knowingly to offer work in a regulated position, or to procure work in a regulated position for an individual who is disqualified from working with children, or to fail to remove such an individual from such work. The DBS will inform the police if a disqualified person attempts to obtain work with children.

The DBS website contains guidance for employers on judging the suitability of applicants as does the CIPD website; particularly in the CIPD document Employing Ex-Offenders: A Practical Guide.



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Rehabilitation periods

The length of the rehabilitation period depends on the sentence given – not the offence committed. For a custodial sentence, the rehabilitation period is decided by the original sentence, not the time served (see table below). Custodial sentences of more than two and a half years can never become spent.

Exceptions to the Act

Various kinds of employment, occupations and professions are exempted. The Exceptions Order overrules the employment rights an ex-offender would otherwise have in respect of spent convictions. Ex-offenders have to disclose information about spent, as well as unspent, convictions, provided the employer states clearly on the application form or at the interview that the job applied for is exempted. Exempted occupations fall into the following categories:

- work involving matters of national security
- work that brings the person into contact with vulnerable groups such as the infirm, elderly, mentally ill and young people under 18
- posts concerned with the administration of justice, for example, police officers, lawyers
- professions that have legal protection, for example, nurses, doctors, dentists, chemists etc
- Health Service appointments.

Sentence	Rehabilitation period for people aged under 18 when convicted	Rehabilitation period for people aged 18 or over when convicted
Prison sentences ¹ of 6 months or less	3.5 years	7 years
Prison sentences of more than 6 months to 2.5 years	5 years	10 years
Borstal (abolished in 1988)	7 years	7 years
Detention centres (abolished in 1988)	3 years	3 years
Fines, ² compensation, probation, ³ community service, ⁴ combination, ⁵ action plan, curfew, drug treatment and testing, and reparation orders	2.5 years	5 years
Absolute discharge	6 months	6 months

1 Including suspended sentences, youth custody (abolished in 1988) and detention in a young offender institution (abolished for those under 18 in 2000 and for those aged 18–20 in 2001).

2 Even if subsequently imprisoned for fine default.

3 For people convicted on or after 3 February 1995. These orders are now called community rehabilitation orders.

4 These orders are now called community punishment orders.

5 These orders are now called community punishment and rehabilitation orders.



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Decision regarding offer of appointment following confirmation of a criminal offence

Name:

Post Offered:

<p>the nature of the offence: In general, convictions for sexual, violent or drug offences will be particularly strong contra-indications for work with children;</p>	
<p>the nature of the appointment: Often the nature of the appointment will help to assess the relevance of the conviction. For example, serious sexual, violent, drug or drink offences would give rise to particular concern where a position was one of providing care. Driving or drink offences would be relevant in situations involving transport of children;</p>	
<p>the age of the offence: Offences which took place many years in the past may often have less relevance than recent offences. However, convictions for serious violent or sexual offences or serious offences involving substance abuse are more likely to give cause for continuing concern than, for instance, an isolated case of dishonesty committed when the person was young. The potential for rehabilitation must be weighed against the need to protect children;</p>	
<p>the frequency of the offence: A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. Anyone who is barred from work in the education sector on grounds that he or she is unsuitable to be employed as a teacher or worker with children and young persons, will also be disqualified from all work with children in a regulated position as set out in section 36 of the Criminal Justice and Court Services Act 2000. It is an offence for a disqualified person to apply for, offer to do, accept or do any work in any of the regulated positions set out in the Act (Appendix 12). It is also an offence for an employer knowingly to offer work in a regulated position, or to procure work in a regulated position for an individual who is disqualified from working with children, or to fail to remove such an individual from such work. The DBS will inform the police if a disqualified person attempts to obtain work with children.</p>	



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Meet with the individual – have they confirmed that the information is correct?	
If yes, is the College satisfied with their explanation? If no, give opportunity to obtain correct information	

Is the post to be offered as a result of considering the above	
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If yes, is there any remaining risk:	
If yes, how will this be addressed?	
If no, has this been communicated to the individual	
Who else within the College has this information been shared with and the decision been communicate to	
Decision made by	
Date	



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