

Work health assessments

July 2013

About the NHS Employment Check Standards

This document outlines the work health assessments that NHS organisations (across England) are required to undertake in the appointment and ongoing employment of individuals in the NHS. It is one of a set of six documents that make up the NHS Employment Check Standards.

The NHS Employers organisation has developed these standards with the Department of Health and employers in the NHS. The standards, last updated July 2013, include those that are required by law, those that are determined by Department of Health (DH) policy in relation to compliance with the Government's core standards outlined within the Standards for Better Health, and those required for access to the NHS Summary Care Record (SCR).

All NHS providers (including NHS organisations and private providers) are required to be registered with the Care Quality Commission (CQC) and, as part of this registration, are required to comply with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009. The CQC's Essential Standards of Quality and Safety outline 16 core standards which must be met, including having robust recruitment practices in place (Outcome 12: *Requirements relating to workers*, specifically refers). NHS providers should therefore provide evidence of compliance with the NHS Employment Check Standards as part of the CQC's annual regulatory framework.

Failure to comply with these standards could potentially put the safety and even the lives of patients, staff and the public at risk.

The NHS Employment Check standards apply to all applications for NHS positions (prospective employees) and staff in ongoing NHS employment. This includes permanent staff, staff on fixed-term contracts, volunteers, students, trainees, contractors NHS, highly mobile staff, temporary workers (including locum doctors), those working on a trust bank, and other workers supplied by an agency. Trusts using agency, contractor or other external bodies to provide services must ensure, through regular audit and monitoring, that their providers comply with these standards.

Avoiding discrimination

Under the Equality Act 2010, employers must not unlawfully discriminate in their recruitment processes on the grounds of ethnicity, disability, age, gender or gender re-assignment, religion or belief, sexual orientation, pregnancy or maternity, or marriage or civil partnership. To avoid discrimination, employers must treat all job applicants in the same way at each stage of their recruitment process.

Recording and protecting data

NHS employers must carry out all checks in compliance with the Data Protection Act 1998. Information should only be obtained where it is absolutely essential to the recruitment decision and kept in accordance with the Act. Employers must record the outcome of all checks undertaken, using the Electronic Staff Record (ESR), where available, or an alternative HR management system. These checks form part of the information governance and assurance standards linked to the use of the NHS Summary Care Record (NHS SCR). For more details, visit the Health and Social Care Information Centre: <http://systems.hscic.gov.uk>

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Introduction

All NHS staff must have a work health assessment (sometimes referred to as a pre-placement health assessment), that adheres to equal opportunities legislation and good occupational health practice.

The purpose of a health assessment is to assess whether new employees:

- have a health condition or disability that requires adjustments in the workplace to enable them to undertake the post offered; or
- have a health condition or disability that requires restrictions to their role (e.g. Exposure Prone Procedures (EPP) workers with a blood-borne virus).

All work health assessments must take into account the requirements of the disability provisions within the Equality Act 2010 and reasonable adjustments must be made to ensure that people can work in the NHS regardless of physical impairment or learning disabilities.

A health assessment must only be made once a job offer has been made. Employers must make it clear to prospective employees that any offer of appointment is conditional pending the successful completion of pre-employment checks, including a health assessment.

Work health assessments are only one of six employment check requirements that employers must undertake, as outlined in the NHS Employment Check Standards. Please refer to the other documents in the standards for information on *verification of identity, right to work, professional registration and qualification, employment history and reference, and criminal record and barring checks.*

Minimum requirements

The changes which came into effect from 1 October 2010 under the Equality Act (Section 60 of the Act refers) were aimed at restricting the circumstances when an employer can ask questions about an individual's disability or health prior to them being offered employment (whether this be a conditional or unconditional offer of employment).

In practice, this means that it is unlawful to ask any such questions as part of your application process or during interview, except in certain exceptional circumstances (see section on exceptions below). This also includes referring the applicant to an occupational health service, or asking them to fill in a pre-employment health questionnaire (PEHQ) provided by an occupational health professional prior to any offer of employment being made.

Employers should no longer issue applicants with PEHQs as part of the interview process, except in exceptional cases. In their place, employers should invite prospective employees to indicate which of the following two statements apply to them i.e. tick *either* statement A or B:

- A. I am not aware that I have a health condition or disability that might impair my ability to undertake effectively the duties of the position that I have been offered.
- B. I do have a health condition or disability that might affect my work and may require special adjustments to my work or my place of work.

These two statements should be included as part of the letter issued by Human Resources outlining their conditional offer of appointment.

The changes outlined within the Equality Act 2010 do not make any amendment to requirements for health care workers involved in Exposure Prone Procedures (EPP), patient care, patient contact, or body fluid sample handling. Specific additional pre-placement screening for these groups of staff should be relevant to the job hazard and risk profile and must be undertaken in accordance with relevant guidance. See further guidance on Public Health England's website at:

www.hpa.org.uk/InfectiousDiseases/BloodborneVirusesAndOccupationalExposure/

Some NHS providers may choose to undertake supplementary screening that meets their local needs. However, this must be undertaken in accordance with the Equality Act 2010, as outlined above. Further guidance can be found at:

www.nhsemployers.org/HealthyWorkplaces/Keeping-staff-well/occupationalhealth/

Exceptions

The exceptions to the ruling around what questions can be asked prior to any offer of employment are more fully outlined in Section 60 of the Equality Act 2010, but in summary this includes where employers need to ask questions for the sole purpose of:

- ascertaining whether reasonable adjustments are necessary as part of the interview process i.e. to allow ease of access to the building or interview room, or asking questions to establish whether the individual may have any special needs to enable them to undertake an assessment as part of the interview process
- ascertaining whether the applicant can carry out a function which is intrinsic to the job being applied for, including asking a specific disability or health related question which would determine whether or not such a person could carry out this function with reasonable adjustments in place – any question asked must be relevant to the position being offered
- taking positive action in relation to disabled people – for instance asking questions which ask if a person is disabled so they can benefit from any measures aimed at improving disabled people's employment rates. It is essential that you make absolutely clear to the applicant that any such questions are targeted as ascertaining eligibility for schemes which are targeted at helping people with disabilities

- where you can legitimately demonstrate that a job has an occupational requirement for a person with a specific disability or impairment, then you may ask about a person's health or disability to establish that the applicant meets those requirements
- monitoring diversity – any data obtained as part of any monitoring process should be collected and recorded separately from any application.

There are very few situations where a question about a person's health or disability would be considered justifiable prior to their offer of appointment outside of these exceptions.

Employers may find it useful to refer to the Code of Practice on Employment which can be found on the Equality and Human Rights Commission (EHRC)'s website which provides full detail about each of these circumstances at:

www.equalityhumanrights.com/legal-and-policy/

The Process

A pre-placement health assessment should be carried out for NHS staff when they:

- take up their first post, whether or not this is preceded by a period of training
- are subsequently appointed by a new NHS employer, or
- change jobs, where this involves a significant change of their duties (e.g. non-EPP to EPP, or non-clinical to clinical).

In all cases, the assessment should take place after any offer of appointment (whether conditional or unconditional), but prior to commencement of their employment or training.

Work health assessments must be carried out fairly, objectively and in accordance with equal opportunities legislation and good occupational health practice. Close attention should also be paid to the stage at which a health assessment is made to ensure that the process is not contrary to the requirements of the Equality Act 2010.

If the potential employee has indicated that statement B is applicable to them, then a suitably trained recruiting manager, or occupational health practitioner (depending on local protocol), should explore the type of adjustments or restrictions that may be necessary. In difficult or more complex cases, the potential employee should always be referred to an occupational health service, or other suitably qualified practitioner to undertake the assessment. If, after consideration, there are no adjustments or restrictions required, the process ends here.

If it is considered necessary, an interview with the prospective employee should be arranged to assess their health in relation to the post being offered and identify what reasonable adjustments, if any, can be put in place to enable them to undertake the roles and responsibilities of the job being offered.

Responsibilities

Although responsibility for recruitment ultimately rests with the referring manager, the occupational health service's role is to provide specialist confidential advice to the employer and the applicant.

It is important to recognise that the occupational health service has a duty not only to the potential employee, to whom they are providing a professional service, but also to the applicant's potential employer, patients and colleagues.

Responsibility for taking up references, including information about absence behaviour, and for making registration checks, rests with the referring manager.

The referring manager decides whether to employ the applicant, in light of reports from the occupational health service and other relevant information. While they may choose to employ an applicant despite concerns expressed by the occupational health service, they will need to be able to fully justify such a decision.

Risk assessment

Employers are legally required to carry out risk assessments to manage the health and safety of staff and others, effectively on their premises. For more information on managing risk – see

www.nhsemployers.org/HealthyWorkplaces/Keeping-staff-well/HealthAndSafety/

Making reasonable adjustments

Under the disability provisions within the Equality Act 2010, employers have a duty to make 'reasonable adjustments' for job applicants or employees who have a disability. The key aim of making reasonable adjustments is to remove, or reduce as much as possible, any significant disadvantages presented to an individual that would not affect an able-bodied person. This may include reviewing how the employment is structured, removal of physical barriers and/or providing additional support for the individual. In the majority of cases, any adjustment would be inexpensive.

Making reasonable adjustments may include:

- making adjustments to premises
- altering the person's working hours
- allowing absences during working hours for medical treatment
- giving additional training
- providing special equipment or modifying existing equipment
- changing instructions or reference manuals, or
- providing additional supervision and/or support.

The decision about whether or not it would be reasonable to make a particular adjustment is dependent on a number of factors. Employers may therefore also need to consider:

- how effective the adjustment is in preventing the disadvantage
- how practical it is
- financial and other costs and the extent of any disruption

- the extent of the employer's financial or other resources
- availability to the employer of financial or other help to make the adjustment, or
- the size and type of organisation.

Further guidelines on making reasonable adjustments can be found on the Equality and Human Rights Commission website at: www.equalityhumanrights.com/guidance-for-employers/the-duty-to-make-reasonable-adjustments-for-disabled-people/

Keeping and transferring occupational health records

Once the applicant has been appointed, any occupational health information obtained from the individual, or from previous employers/educational providers – including immunisation history, health monitoring and referrals, where relevant to their appointment – should be kept on their occupational health record on ESR, or other relevant record system and accessed by the Occupational Health Service. Any such information should not be recorded as part of their personnel file.

Employers should refer to *Records Management Code of Practice* (Part 2 Second Edition, Annex D1: Health Records Retention Schedule specifically refers) which can be found on the Department of Health's website at:

www.gov.uk/publications/records-management-nhs-code-of-practice

Withdrawal of appointment

No applicant should be refused employment on health grounds unless:

- expert occupational medical advice has been sought
- the applicant has had the opportunity to discuss issues raised with an occupational health professional, or
- the employing manager has given full consideration to all of the facts.

Appendix 1 – Legislative requirements

Equality Act 2010

The Equality Act came into force on 1 October 2010. The Act combines over 116 separate pieces of legislation into one single Act to provide a legal framework to protect the rights of individuals.

The Act makes clear that employers must not unlawfully discriminate in their recruitment processes because of ethnicity, disability, age, gender or gender re-assignment, religion or belief, sexual orientation, pregnancy or maternity, marriage or civil partnership. These categories are known in the Act as 'protected characteristics'.

The Act outlines when and what information should be obtained in relation to an individual's health or disability as part of the recruitment process and employer duties to make reasonable adjustments.

Extracts of the relevant sections in the Act have been included below for ease of reference:

Section 60: Enquiries about disability and health

(1) A person (A) to whom an application for work is made must not ask about the health of the applicant (B)—

(a) before offering work to B, or

(b) where A is not in a position to offer work to B, before including B in a pool of applicants from whom A intends (when in a position to do so) to select a person to whom to offer work.

(2) A contravention of subsection (1) (or a contravention of section 111 or 112 that relates to a contravention of subsection (1)) is enforceable as an unlawful act under Part 1 of the Equality Act 2006 (and, by virtue of section 120(8), is enforceable only by the Commission under that Part).

(3) A does not contravene a relevant disability provision merely by asking about B's health; but A's conduct in reliance on information given in response may be a contravention of a relevant disability provision.

(4) Subsection (5) applies if B brings proceedings before an employment tribunal on a complaint that A's conduct in reliance on information given in response to a question about B's health is a contravention of a relevant disability provision.

(5) In the application of section 136 to the proceedings, the particulars of the complaint are to be treated for the purposes of subsection (2) of that section as facts from which the tribunal could decide that A contravened the provision.

(6) This section does not apply to a question that A asks in so far as asking the question is necessary for the purpose of—

(a) establishing whether B will be able to comply with a requirement to undergo an assessment or establishing whether a duty to make reasonable adjustments is or will be imposed on A in relation to B in connection with a requirement to undergo an assessment,

(b) establishing whether B will be able to carry out a function that is intrinsic to the work concerned,

(c) monitoring diversity in the range of persons applying to A for work,

(d) taking action to which section 158 would apply if references in that section to persons who share (or do not share) a protected characteristic were references to disabled persons (or persons who are not disabled) and the reference to the characteristic were a reference to disability, or

(e) if A applies in relation to the work a requirement to have a particular disability, establishing whether B has that disability.

(7) In subsection (6)(b), where A reasonably believes that a duty to make reasonable adjustments would be imposed on A in relation to B in connection with the work, the reference to a function that is intrinsic to the work is to be read as a reference to a function that would be intrinsic to the work once A complied with the duty.

(8) Subsection (6)(e) applies only if A shows that, having regard to the nature or context of the work—

(a) the requirement is an occupational requirement, and

(b) the application of the requirement is a proportionate means of achieving a legitimate aim.

(9) "Work" means employment, contract work, a position as a partner, a position as a member of an LLP, a pupillage or tenancy, being taken as a devil, membership of a stable, an appointment to a personal or public office, or the provision of an employment service; and the references in subsection (1) to offering a person work are, in relation to contract work, to be read as references to allowing a person to do the work.

(10) A reference to offering work is a reference to making a conditional or unconditional offer of work (and, in relation to contract work, is a reference to allowing a person to do the work subject to fulfilment of one or more conditions).

(11) The following, so far as relating to discrimination within section 13 because of disability, are relevant disability provisions—

(a) section 39(1)(a) or (c);

(b) section 41(1)(b);

(c) section 44(1)(a) or (c);

(d) section 45(1)(a) or (c);

(e) section 47(1)(a) or (c);

(f) section 48(1)(a) or (c);

(g) section 49(3)(a) or (c);

(h) section 50(3)(a) or (c);

(i) section 51(1);

(j) section 55(1)(a) or (c).

(12) An assessment is an interview or other process designed to give an indication of a person's suitability for the work concerned.

(13) For the purposes of this section, whether or not a person has a disability is to be regarded as an aspect of that person's health.

(14) This section does not apply to anything done for the purpose of vetting applicants for work for reasons of national security.

Chapter 2: Adjustments for disabled persons

20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(6) *Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.*

(7) *A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.*

(8) *A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.*

(9) *In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—*

- (a) removing the physical feature in question,*
- (b) altering it, or*
- (c) providing a reasonable means of avoiding it.*

(10) *A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—*

- (a) a feature arising from the design or construction of a building,*
- (b) a feature of an approach to, exit from or access to a building,*
- (c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or*
- (d) any other physical element or quality.*

(11) *A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.*

(12) *A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.*

(13) *The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.*

21 Failure to comply with duty

(1) *A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.*

(2) *A discriminates against a disabled person if A fails to comply with that duty in relation to that person.*

(3) *A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.*

22 Regulations

(1) Regulations may prescribe—

(a) matters to be taken into account in deciding whether it is reasonable for A to take a step for the purposes of a prescribed provision of an applicable Schedule;

(b) descriptions of persons to whom the first, second or third requirement does not apply.

(2) Regulations may make provision as to—

(a) circumstances in which it is, or in which it is not, reasonable for a person of a prescribed description to have to take steps of a prescribed description;

(b) what is, or what is not, a provision, criterion or practice;

(c) things which are, or which are not, to be treated as physical features;

(d) things which are, or which are not, to be treated as alterations of physical features;

(e) things which are, or which are not, to be treated as auxiliary aids.

(3) Provision made by virtue of this section may amend an applicable Schedule.

Employers may find it useful to refer to additional guidance on the Equality and Human Rights Commission which explains in more detail, employer responsibilities under the Equality Act at: **www.equalityhumanrights.com/guidance-for-employers/**

A full version of the Act can be obtained from the Office for Public Information website at: **www.legislation.gov.uk/ukpga/**

Further information

Every effort is made to ensure that the requirements within these standards are updated in line with new legislation and Department of Health policy as it comes into force. Where employers choose to download hard copies of the standards, it is essential that they regularly refer to the NHS Employers website to ensure that they are fully compliant with any updated legal and mandated requirements.

Alerts to any changes to these standards are published in the NHS Workforce Bulletin, which you can download or subscribe to at:

www.nhsemployers.org/Aboutus/Publications/workforce-bulletin/

Employers may also access updates by downloading the free NHS Employers app which can be downloaded from iTunes and Google Play Store by typing 'NHS Employers' in the search bar.

Visit: **www.nhsemployers.org/RecruitmentAndRetention/Employment-checks/**

Email: **employmentchecks@nhsemployers.org**

NHS Employers

The NHS Employers organisation is the voice of employers in the NHS, supporting them to put patients first. Our vision is to be the authoritative voice of workforce leaders, experts in HR, negotiating fairly to get the best deal for patients.

We work with employers in the NHS to reflect their views and act on their behalf in four priority areas:

- pay and negotiations
- recruitment and planning the workforce
- healthy and productive workplaces
- employment policy and practice.

NHS Employers is part of the NHS Confederation

Contact us

For more information on how to become involved in our work, email getinvolved@nhsemployers.org

www.nhsemployers.org

enquiries@nhsemployers.org

NHS Employers

50 Broadway

London

SW1H 0DB

2 Brewery Wharf

Kendell Street

Leeds LS10 1JR

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