



Aide Memoir : Exempted Question and Prescribed Purpose

ADVICE TO ALL COUNTERSIGNATORIES

When submitting an application for a Standard or Enhanced Disclosure it is essential that Countersignatories **ensure** that the position applied for in Field H2 of the Disclosure Application Form is one where the exempted question can be asked (Field H5) and for an Enhanced Disclosure, that it falls within a Prescribed Purpose (Field H6). These are two questions that seem to present the greatest difficulty to Countersignatories. On occasions Registered Bodies have submitted applications where they stated the answer to both questions was “Yes”. During processing of the applications it emerged the applicant was barred from working with vulnerable groups. On further investigation of the specific position applied for work it became clear that the answer to these questions should have been “No”, and no application should have been made. This caused considerable problems for both the applicant and the Registered Body as the cases were referred to PSNI for investigation. The main areas regarding compliance are :-

1. Exempted Question (Field H5):

When submitting a Standard or Enhanced Disclosure application to AccessNI, if you have indicated ‘Yes’ at Field H5 you are confirming that the position at Field H2 on the form is exempt from the Rehabilitation of Offenders (NI) Order 1978. This means you are entitled to see the Applicant’s full criminal record as part of your pre-employment checks. **It is an offence to request sight of an individual’s full criminal record if you have no legal basis to do so.**

The Rehabilitation of Offenders (NI) Order 1978 defines a set of rules that govern when convictions can become ‘spent’. Some convictions become spent when a rehabilitation period is completed and when no new and related offences occur. An individual is not obliged to disclose they committed offences which are now spent, unless they are applying for jobs where legislation says they must do so.

Therefore, Countersignatories must be sure that the position is exempt from the Order before they indicate ‘Yes’ in Field H5. You should consult the Order or seek legal advice if not sure. Countersignatories should not, given the advice in the last sentence of paragraph 1 of this section, simply tick ‘Yes’ in Field H5 as a matter of course.

Working with children and vulnerable adults in Regulated or Controlled Activity, as defined by the Safeguarding Vulnerable Groups (NI) Order 2007, is regarded as exempt from the Rehabilitation of Offenders (NI) Order 1978.

2. Prescribed Purpose (Field H6):

This relates to those positions/jobs where an applicant and a Countersignatory are eligible to apply for an Enhanced Disclosure. A list of these positions/jobs is set out in paragraph 9 of Statutory Instrument 2009 No. 2495 (see www.opsi.gov.uk). **If the position for which you are seeking an Enhanced Disclosure isn't on this list then you have no entitlement to apply for such a disclosure and should not, in any circumstances, do so.** Again, it is an offence if you seek an Enhanced Disclosure when you have no legislative basis to do so, and legal proceedings may follow.

Before marking Field H6 on the Application Form, Countersignatories **must** ensure there is an entitlement to obtain an Enhanced Disclosure. If you are unsure, you should seek legal advice (do not contact AccessNI – only you will know what the position applied for actually does).

Again, it is important to stress that where the post involves:-

- Working in Regulated or Controlled Activity, as defined by the Safeguarding Vulnerable Groups (NI) Order 2007, with children or vulnerable adults (vulnerable adults are defined within the meaning of Part II of Schedule 2 to the Safeguarding Vulnerable Groups (NI) Order 2007); or
- Regularly caring for, training, supervising or being in sole charge of children and/or vulnerable adults (the latter as defined within the meaning of Article 3 of the Safeguarding Vulnerable Groups (NI) Order 2007) and/or advising or counselling children.

then there is an entitlement to apply for an Enhanced Disclosure.

In relation to bullet point 2, the AccessNI working definition of “regularly” is:

*An individual who is not engaged in Regulated or Controlled Activity by virtue of the fact they do not meet the frequency and intensity tests established by the Safeguarding Vulnerable Groups (NI) Order, but have established a **pattern** of working closely with children or vulnerable adults (the latter as defined within Article 3 of the SVG Order) on **an on-going or repetitive basis for a minimum of 3 months**, may be eligible to apply for an Enhanced Disclosure certificate. The type of work must involve caring for, training, supervising or being in sole charge of a child or a vulnerable adult though in the case of children this is also extended to advising and counselling. Eligibility to apply for an Enhanced Disclosure Certificate under this definition **does not extend to one-off activities**.*

Other groups entitled to apply for an Enhanced Disclosure include;

- Those seeking to foster or adopt children;
- Those providing registered child-minding and day care activities;
- Those applying for a taxi driving licence; and
- Registration for certain health and social care positions.