

Provider and CQC Inspector FAQs for meeting CQCs requirements of employment for Regulation 19

Regulation 19(3)(a) of the Health and Social Care Act (Regulated Activities) Regulations 2014 requires providers to make available to CQC the information set out in Schedule 3.

CQC Inspectors may ask for this information at any time in relation to each “person employed for the purposes of carrying on a regulated activity” (see Regulation 19(1)).

“Person employed” will include any member of staff who currently works in the service including agency, bank staff and volunteers (based on the broad meaning of “employment” set out in Regulation 2, which extends the scope to those engaged otherwise than under a contract).

The provision that the person is employed “for the purposes of carrying on a regulated activity” is likely to mean that the information will be required for the majority of (if not all) staff, including those who do not come into direct contact with service users.

The FAQs below have been written to help providers and inspectors to understand what is required to meet Regulation 19. These changes came into force on 1 April 2010 under Regulation 21(b) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, and apply to all providers registering or registered with CQC from that date.

CQC has committed to developing and maintaining an open, transparent and challenging relationship with providers. The approach to inspection starts by looking for good practice and encouraging improvement. This guidance is not meant to steer inspectors away from looking for “good” as they will still apply a proportionate and risk based approach when inspecting under this regulation.

Q1. What is covered in Schedule 3 and what information is needed for each one?

Schedule 3 sets out eight categories of information required to be kept by providers about all persons employed in the provision of services.

Inspectors do not need to look at all eight types of information at every inspection, but they do need to be assured that providers have this information. So, if information is received that concerns CQC, the inspector may ask to see and review as much as they deem necessary.

Type of information required	Explanation
1. Proof of identity including a recent photograph.	A photograph will not be accepted as “recent” if the staff member can’t be recognised from that passport photograph

	<p>anymore (for example, they have since had plastic surgery). A new photograph would not be required for a slight change of appearance - for example, dyeing hair or growing a beard.</p>
<p>2. Where required for the purposes of an exempted question in accordance with section 113A(2)(b) of the Police Act 1997, a copy of a criminal record certificate issued under section 113A of that Act together with, after the appointed day and where applicable, the information mentioned in section 30A(3) of the Safeguarding Vulnerable Groups Act 2006 (provision of barring information on request).</p>	<p>CQC expects each provider to undertake the level of DBS check for which a particular staff member is eligible (see DBS website for information about eligibility). For some staff this will be a DBS issued standard criminal record check, for others an enhanced criminal records check or an enhanced check with barred list information.</p> <p>Providers must be able to demonstrate sound reasons for not obtaining a full DBS check before a person takes up post, and also demonstrate they have assessed any potential risk.</p>
<p>3. Where required for the purposes of an exempted question asked for a prescribed purpose under section 113B(2)(b) of the Police Act 1997, a copy of an enhanced criminal record certificate issued under section 113B of that Act together with, where applicable, suitability information relating to children or vulnerable adults.</p>	<p>AdultFirst checks are for working with adults, and should not be relied upon routinely. They are not appropriate for those intending to work with children.</p> <p>Inspectors will not routinely ask to see a staff member's hard copy DBS check (although, if necessary, may do so in a particular case to determine whether a provider is meeting the regulatory requirements). Inspectors will expect to see that the provider is keeping a record of the information obtained (including whether barred list information was received) and, if a criminal record was reported, evidence that any risks posed by the staff member have been considered and assessed.</p>
<p>4. Satisfactory evidence of conduct in previous employment concerned with the provision of services relating to—</p> <p>(a) health or social care, or</p> <p>(b) children or vulnerable adults.</p> <p><i>(This does not apply if member of staff has not previous worked in health or</i></p>	<p>This information may be in the form of a Reference from a previous employer - <u>but need not be</u>.</p> <p>Written appraisal documentation may also be relied upon to demonstrate an employer's view of an individual's conduct. Written evidence from other persons would also be acceptable if it provides information regarding an individual's conduct.</p>

social care / worked with children or vulnerable adults)	
<p>5. Where a person has been previously employed in a position whose duties involved work with children or vulnerable adults, satisfactory verification, so far as reasonably practicable, of the reason why the person's employment in that position ended.</p> <p>(This does not apply if member of staff has not previous worked with children or vulnerable adults)</p>	<p>Information may be held electronically and must outline all relevant periods of employment or self-employment and the person's reason for leaving that employment. If it has not been practicable to obtain such information, a provider should be able to demonstrate that every reasonable attempt has been made to assure itself about an individual.</p>
<p>6. In so far as it is reasonably practicable to obtain, satisfactory documentary evidence of any qualification relevant to the duties for which the person is employed or appointed to perform.</p>	<p>Documentary evidence may be in the form of a certificate or could be written confirmation from the awarding body that a qualification has been achieved. Providers can also check professional qualifications and professional registration status online with the relevant regulatory body (e.g. the Nursing and Midwifery Council) and should do this where a person has stated they are on a professional register.</p>
<p>7. A full employment history, together with a satisfactory written explanation of any gaps in employment.</p>	<p>A "<i>full employment history</i>" means a career history from the age of first employment. This information may be in the form of a Curriculum Vitae but need not be.</p> <p>Information may be held electronically and must outline all periods of employment or self-employment (whether or not related to health or social care), showing beginning and end dates, (actual or approximated month and year), together with an explanation of periods of non-employment.</p> <p>Individual placements within a continuous period of employment need not be listed.</p>
<p>8. Satisfactory information about any physical or mental health conditions which are relevant to the person's capability, after reasonable adjustments are made, to properly perform tasks which are intrinsic to their employment or appointment for the purposes of the regulated activity.</p>	<p>If, after reasonable adjustments have been made (as described in equality legislation), a particular health condition may nevertheless impact on capability to perform tasks, information about that condition must be kept for the purposes of this paragraph.</p>

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Q.2. What approach will CQC take during an inspection?

- A.** During an inspection, the Inspector will consider any information put forward by a provider seeking to demonstrate compliance with the Schedule.

When considering the amount of information to review, Inspectors will act proportionately and will (generally) ask for a sample of records. This may mean that documents are not reviewed in relation to all 8 categories of information or that documents relating to a particular category are not required in respect of every employee. However, inspectors may ask to review further documents as necessary.

CQC Inspectors may ask providers for copies of documents (or printouts of information held electronically) – if they do so, they will adopt a similar proportionate approach to the copying of documents as they would to the review of documents. It is not necessary for providers to keep documents in paper format. Electronic or online evidence can also be used

There is a range of good guidance documents for providers that cover values-based recruitment, appraisal, development and disciplinary actions. CQC expects providers to be aware of a range of guidelines relevant to their business sector, and to be able to demonstrate that the recruitment and selection procedures are consistent with responsible employment practice.

Q.3. What if an applicant can't remember all their previous jobs?

- A.** If an applicant has not compiled a CV from commencement of their first employment, they may find it difficult to recall some employers/jobs. Anyone seeking employment must still attempt to provide a full employment history, and make it clear in their application where they are unable to recall some information. Providers should discuss/explore any gaps further with the applicant at the initial interview. CQC expects the provider to be doing this as part of their recruitment procedure risk assessment when this information cannot be obtained.

Q.4. Do providers have to obtain evidence of conduct for every part of the complete employment history from applicants?

- A.** No – only those roles which relate to health and social care, or working with children or vulnerable adults.

Q.5. Is there a minimum requirement for the period covered by the evidence of conduct?

- A.** No. The provider is required to undertake sufficient checks so they can evidence the applicant:
- Is of good character

- Has the necessary qualifications, competence, skills and experience necessary for the work to be performed
- Is able to properly perform the tasks (after any reasonable adjustment)

Q.6. What if the evidence of conduct only confirms dates of employment?

Providers should make every effort to gain additional information about the person's character, skills and experience. However, some companies/organisations will only provide a statement confirming dates of employment. When this occurs, providers should assess any potential risk and make sure the person has appropriate supervision until they can demonstrate competence.

Q.7. Do providers need to obtain full employment histories and evidence of conduct for existing staff retrospectively?

- A.** No. Inspectors must be proportionate about past recruitment practices, especially where people were recruited many years ago. However, this needs to be considered case by case.

If people have been recruited since the Fundamental Standards were introduced in 2014, an Inspector might ask the provider about the rationale for the recruitment practices so, if providers follow any particular good practice guidance, it would be helpful to show this to Inspectors.

If providers have any current concerns about the performance, abilities, physical or mental health of any of their staff, the Inspector will want to see what steps they have taken to address these, or to mitigate risks to the people who receive support, such as regular supervision and provision of opportunities for learning and development. This is more important than plugging employment gaps in staff files.

Q.8. What if the checks under Regulation 19 have not been completed

- A.** A failure to evidence safe recruitment practice is likely to result in a breach of regulation which could affect the rating under Safe, Effective and/or Well-led.

Where providers have not been able to gain appropriate evidence of conduct, they must demonstrate that every attempt was made. If these attempts are not successful then providers should consider supervision options as previously mentioned under Question 6.

Inspectors will use the CQC enforcement policy and decision tree to decide what regulatory action to take if they find recruitment practice is not safe.

Q.9 How long should providers keep staff information/records?

In relation to all records, providers must take into account guidelines produced by the Information Commissioner's Office in relation to General Data Protection Regulation (GDPR) (including Principle E, which requires that personal data

shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which it is processed)

CQC retains staff recruitment records for 7 years after the staff member has left the organisation..

For those who are (or who work with) NHS providers, the Information Governance Alliance has published the Records Management Code of Practice for Health and Social Care 2016. This provides, in relation to persons employed:

Upon termination of contract, records must be held up to and beyond their statutory retirement age.

Staff records may be retained beyond 20 years if they continue to be required for NHS business purposes, in accordance with Retention Instrument 122. They are not exempt from Principle E of the [GDPR].

To reduce the burden of storage and for reasons of confidentiality it is recommended that a summary be prepared and held until the employee's 75th birthday or 6 years after leaving whichever is the longer and then reviewed.

It can be found here in full: <https://digital.nhs.uk/article/1202/Records-Management-Code-of-Practice-for-Health-and-Social-Care-2016>