



FORENSIC

Disclosure of Criminal Records in Overseas Jurisdictions

Summary of findings

March 2009

ADVISORY

Important Notice

Disclaimer

We have been instructed by the Centre for the Protection of National Infrastructure (CPNI) to undertake research into the availability of criminal records information in a number of countries including members of the European Union and EEA Member States, as well as a number of countries within the wider European area and certain selected countries outside this region.

The information contained in this report was compiled during December 2008 – January 2009. Although we have sought to identify any major pending changes to processes and procedures for disclosure of criminal records in the countries included in this report, it is possible that changes may have occurred since the date the research was undertaken.

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We have satisfied ourselves, so far as possible, that the information presented is consistent with other information which was made available to us in the course of our work in accordance with our terms of engagement. We have not however sought to establish the reliability of the sources by reference to other evidence.

Methodology

This report sets out guidance on how to obtain criminal records disclosure on individuals in 54 countries. It includes 30 countries within the European Economic Area (EEA) and 11 countries within the wider European area. It also includes a number of countries outside the EEA/wider European region that were selected because of the number of nationals of these countries seeking employment in the United Kingdom.

Our research approach takes into account the following:

- This guidance focuses on practical, pragmatic measures to obtaining criminal records disclosure;
- It emphasises the needs of a UK-based employer to obtain criminal records from overseas jurisdictions;
- It seeks to draw attention to any practical, legal or social impediments to obtaining criminal records disclosure in overseas jurisdictions;
- Where possible, we have sought to obtain copies of the application form for criminal records disclosure (if applicable) and a sample of the criminal records disclosure. It has been possible to obtain sample disclosures for some, but not all, countries covered in this report.



Contents

1	Executive summary	1
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1 Executive summary

1.1 Key similarities

All countries covered within this report maintain criminal records information. In all countries, an individual has a legal right to access his or her own criminal record. The exact form of disclosure varies from country to country. In some countries, disclosure is presented as a certificate of good conduct or no criminal conduct. In other countries, a criminal records disclosure is provided that will indicate the existence of criminal convictions, if disclosable in accordance with local rehabilitation laws and regulations.

The cost of obtaining disclosure in the majority of countries covered in this report is either a notional cost or is free of charge.

In all countries within this report, where a third party is entitled to obtain a copy of a criminal records disclosure, the individual must provide their express prior written consent.

1.2 Level of information disclosed

In general, there is little consistency between countries in terms of information disclosed. Not only do the categories of criminal conviction differ from country to country, but the laws governing rehabilitation of offenders also vary significantly. In some countries, all criminal convictions are disclosed. In others, criminal records are expunged automatically after a period of time or may be expunged after a period of time depending on the length of the original sentence imposed. Certain countries issue Certificates of Good Conduct as the only form of disclosure. If an individual has a criminal record, the issuing authority will not provide a Certificate of Good Conduct, but may also not stipulate the reasons for not granting such a certificate.

In some countries, the criminal convictions disclosed are at the discretion of the issuing authority, depending on the prospective job role applied for. In general terms, an authority responsible for issuing criminal record disclosure may provide enhanced disclosure (i.e. all criminal records regardless of the rehabilitation regime) where the prospective employment position involves access to children, vulnerable adults, or key government posts with access to confidential or secret information. Such enhanced disclosure is, in most cases, limited to domestic employment positions and as such a UK employer (or an individual seeking employment in the UK) is rarely permitted to apply for enhanced disclosure.

In certain countries, there are categories of criminal conviction (such as crimes against the state, or certain categories of misdemeanour) that have no equivalence under UK law, or would not be subject to criminal sanction in the UK.

1.3 **Method of application**

Methods of application for criminal record disclosure vary between countries. Those countries with centralised systems and databases for management of criminal record disclosure in general provide an on-line application process. Broadly, this includes countries in Western Europe. A majority of countries covered in this report permit application by post. In such cases an application form is frequently available on-line. In a smaller number of countries, application must be made in person by the individual. This is more frequently the case where management of criminal records is decentralised and/or criminal records are held in a manual format.

In 44 of 54 (81 per cent) countries covered in this report, there is an option for an individual and/or their appointed representative to apply from overseas. In 69 per cent countries there is an option for an individual and/or a prospective employer to apply for disclosure of criminal record information through an authorised third party, such as a personal representative or a pre-employment screening agency, with the express consent of the individual.

In half the countries covered in this report (27 of 54 countries) it is possible to apply for disclosure of criminal record information through the relevant embassy, high commission or consulate in the UK.

In addition to the criminal record disclosure routes set out in this document, it is generally possible to apply for disclosure of criminal records under Freedom of Information legislation. We would emphasise that such a disclosure route does not generally represent the “official” method of criminal record disclosure. In a number of countries, laws exist that prohibit an employer from requesting an individual to provide a copy of his/her criminal record disclosure.

1.4 **Security of disclosure**

There is a wide range of security measures employed amongst the countries covered in the report, governing the disclosure of criminal record information. Of the 54 countries surveyed:

- In 22 of 54 countries (41 per cent), the prospective employer may receive a copy of the criminal record disclosure directly from the issuing authority.
- In 31 of 54 countries (57 per cent), the employer may contact the issuing authority to confirm the authenticity of the certificate issued.
- In 43 of 54 countries (80 per cent), the criminal record disclosure certificate includes multiple security features such as: watermarks, official stamps, official seals, signatures, letterhead or specific paper.
- In 6 of 54 countries (11 per cent), use is made of more advanced security features such as fingerprinting to reduce the risk of “false positive” matches.

In addition, it is generally possible for an individual or an employer to obtain a legally-recognised (apostilled) version of the criminal record disclosure.

1.5 Disclosure timeframes

There is no consistency of timeframes for disclosure of criminal record disclosure amongst the countries covered in this report. In 14 of 54 countries (26 per cent), including those such as Greece, India, Liechtenstein, Slovakia and Philippines, an individual may obtain immediate disclosure of criminal record information. In six of 54 countries (13 per cent), including those such as Bangladesh, Pakistan, Poland and Nigeria, the turnaround timeframe for disclosure can be up to 60 days. An employer should take into account this wide variation of timeframes when planning for pre-employment screening procedures.

1.6 Quality of records

There is a wide variation in quality of underlying criminal record data amongst the 54 countries in this report. Key factors include the following:

- The extent to which records are held at a national level or at a regional / local level. In some countries, information may only be held at a local level. Even if information is consolidated at a national level, owing to the level of record-keeping, such records may be incomplete, or out of date. In some countries which are organised on a regional, state, or territorial basis, it is technically possible for an individual to apply for disclosure of criminal record information in one region, state or territory. Prospective employers should be alert to the possibility that a criminal record disclosure may not necessarily reflect records held within all regions nationally.
- In some countries covered in this report, records are held manually and not electronically. Many countries have moved towards electronic records and centralised databases in recent years. There is an ongoing trend to digitise records. However, in a number of countries (in particular West Africa and the Indian Sub-Continent countries covered in this report) records are either held manually, or the electronic archive is incomplete.

1.7 Other issues

In the majority of countries surveyed in this report, there is some form of security feature inherent in the criminal record disclosure. Nevertheless, the quality of underlying records (see above) and local corruption issues in certain countries may undermine the veracity of criminal records disclosure. This is a particular issue in parts of South-East Asia and Africa and is cited by organisations such as *Transparency International* and the *Asian Development Bank*.