

All UK Aerodrome Managers  
All UK and Overseas Airlines  
All Regulated Cargo Agents & Airlines  
All Regulated Suppliers of in-flight supplies

Direct Line: 020 - 7944 2405  
E-mail: [neil.williams@dft.gsi.gov.uk](mailto:neil.williams@dft.gsi.gov.uk)  
Web Site: [www.dft.gov.uk](http://www.dft.gov.uk)

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Dear Colleague

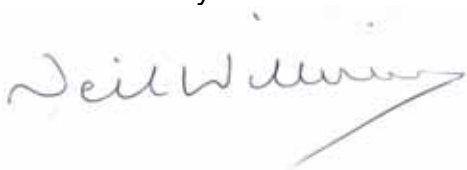
**AVIATION SECURITY: SECURING AN EXEMPTION FROM SIA LICENSING - FAQs**

Please see the attached 'Frequently Asked Questions (FAQs)' giving further guidance on the above subject.

The FAQs provided have been drafted supplementary to the Department's Surefax letters dated 17<sup>th</sup> February and 5<sup>th</sup> March 2012 covering enhanced vetting criteria for certain staff engaged in aviation security functions outside the airport Security Restricted Area (SRA). This is in order for an exemption from the requirements of the Security Industry Authority (SIA) licensing regime to be effective.

I hope this advice, which will shortly be published on DfT's website under 'personnel security and national security vetting', is helpful in dealing with any questions that industry may have.

Yours faithfully



**NEIL WILLIAMS**

## FREQUENTLY ASKED QUESTIONS (FAQS)

### **Securing an Exemption for Certain Aviation Security Staff Engaged in Roles Outside the SRA**

**NOTE:** The broad requirements for conducting background checks for staff regulated under the National Aviation Security Programme (NASP), engaged in roles outside the SRA, are the same as those in respect of staff operating inside the SRA (where a SIA exemption already exists), e.g. where airside passes are issued.

Details on personnel security and national security vetting are displayed on DfT's website at: <http://www.dft.gov.uk/topics/security/personnel-security/>

Information on conducting Criminal Records Checks (CRCs) in the aviation security sector can be found at:

<http://www.dft.gov.uk/publications/personnel-security-aviation-crc>

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#### **Q1. What are the new requirements for vetting aviation security staff engaged in roles outside the airport SRA?**

**A:** Certain aviation security personnel located outside the SRA and undertaking functions regulated in the NASP will be required to successfully complete a background check (which includes a CRC). This requirement will be introduced via a More Stringent Measure (MSM) which will be issued shortly, taking effect on Weds 6<sup>th</sup> June 2012. More information is provided in DfT's Surefax letter dated 5<sup>th</sup> March 2012 - <http://www.dft.gov.uk/publications/exemption-sia-licence-20120305a/>

#### **Q2. What is the difference between a CRB check and a CRC?**

**A:** CRB is an abbreviation for the Criminal Records Bureau, an Executive Agency of the Home Office set up to assist organisations carrying out vetting in respect of their recruitment programmes. The CRB offers two types of criminal records checks - enhanced and standard. For the purpose of satisfying the NASP requirements, a CRC is only required at basic disclosure level (see Q7). The CRB does not offer this service, whereas Disclosure Scotland does (see Q8).

#### **Q3. Why is the Department requiring CRCs? Aviation security personnel outside the SRA already meet EU baseline vetting standards (i.e. pre-employment checks)?**

**A:** This is necessary in order to regularise the situation whereby some sectors of the aviation security industry are presently in breach of the Private Security Industry Authority Act 2001 (PSIA), the legislation regulating the private security industry (including the SIA licensing provisions), which requires certain security functions to be licensable. Staff contravening the PSIA are liable to committing an offence. Our approach to seeking an exemption also avoids dual regulation of the aviation security industry under the NASP and the PSIA.

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The Department has therefore submitted an application for an exemption from the requirement for certain aviation security personnel engaged in roles outside the airport SRA to obtain a SIA licence. The PSIA gives the Secretary of State powers to exempt staff who are subject to 'suitable alternative arrangements'. These are defined in the PSIA as arrangements that are "equivalent, for all practical purposes so far as the protection of the public is concerned, to those applying to persons applying for and granted licences".

This equivalence is determined by a comparison with the SIA's licensing requirements. Suitable alternative arrangements for the purposes of a licensing exemption necessitate imposing a baseline vetting requirement of a background check (which is comparable with the SIA licensing regime) in order for the request for an exemption to be granted. The alternative to not seeking an exemption would be for aviation security staff to obtain a SIA licence. This would be vastly more onerous in cost (£220 per licence, per employee, renewable after 3 years) and time consuming (private security training is required). The cost of obtaining a CRC is less financially burdensome (£25 per employee, valid for 5 years). Moreover, securing a SIA exemption maintains a single regulatory approach for respective sectors of industry and clear lines of responsibility.

**Q4. NASP-regulated personnel working in roles which are not designated as licensable by the SIA are not required to undergo background checks. Will this approach continue?**

A: The roles and functions outlined in section 2 of the table attached with the Department's Surefax of 5<sup>th</sup> March 2012 are not licensable by the SIA and an exemption (requiring a CRC) for these roles and functions is therefore not applicable. However, the Department is undertaking a wider review of domestic air cargo security following the security incident in October 2010 at East Midlands Airport. As such, a requirement for all NASP-regulated cargo security staff to obtain a CRC may be mandated in the future. Any proposal to do so will be subject to a full risk assessment and consultation with industry under a separate work-stream.

**Q5. When will the MSM mandating CRCs be issued?**

A: We will issue the relevant MSM as soon as practicable and prior to the 6<sup>th</sup> June deadline. Although the MSM is likely to be issued a week or two prior to the Direction taking effect, we will endeavour to do so sooner if we are able.

**Q6. How is the application to the SIA for an exemption progressing?**

A: The Department applied on 15<sup>th</sup> March to the SIA for a formal exemption. The SIA Board has confirmed that it is content that the Department's application meets the relevant tests in the exemption framework, subject to CRCs being in place for relevant NASP-regulated staff by 6<sup>th</sup> June 2012. The application has now passed to the Home Office for consideration and a decision by Ministers. If Ministers agree to the exemption, regulations will need to be laid before Parliament to bring the exemption into force.

**Q7. What level of CRC is required?**

A: A CRC at basic disclosure level is required to meet the requirements of a background check.

**Q8. How, and to whom, do I apply for a criminal record certificate?**

A: Applications for CRCs, returned in the form of a criminal record certificate, can be made by individual employees or on behalf of a group of employees by an employer or agency (provided applicants have given their permission). Applicants from England, Wales and Scotland should apply on-line to Disclosure Scotland (an Executive Agency of the Scottish Government) for a basic disclosure (criminal record) certificate. Applicants from Northern Ireland should apply via post to Access NI. The respective website addresses are:

<http://www.disclosurescotland.co.uk/>  
<http://www.dojni.gov.uk/accessni>

**Q9. What is the cost of a standard CRC?**

A: The current fee for a criminal record certificate at basic disclosure level is £25 per employee.

**Q10. Does the requirement to obtain CRCs apply to new or existing staff?**

A: The requirement to successfully complete a background check applies to all staff, irrespective of whether they are new or existing and regardless of length of service. The only exception is where a staff member has a valid CRC already in force in respect of the role undertaken with the same employer. In the meantime, CRCs must be renewed on expiry, after 5 years.

**Q11. Are overseas CRCs required where prospective employees have previously resided, or spent periods abroad?**

A: Yes, for the purposes of a background check, overseas criminal record certificates are required for each country in which an applicant has been continuously resident for 6 months or more, covering the previous 5 year period. Recruitment records must also include an indication of the process used to cover criminal records in respective states of residence, and copies of all criminal record certificates obtained. Recruitment records must be kept for all persons recruited for at least the duration of their contract of employment.

**Q12. What recruitment records must employers retain in order to provide evidence of CRCs having been successfully completed?**

A: NASP provisions require that recruitment records shall be kept for the duration of an individual's contract, and that those recruitment records must include, in the case of a background check, copies of all criminal record certificates. A copy of the certificate should be kept on the personal file in order for the Department's Inspectors or independent validators to be able to verify that the relevant checks have been satisfactorily completed. Criminal record certificates are the property of the individual who applies for them and to whom the information relates. Employers must therefore obtain permission from an individual in order to retain the certificate or keep a copy of it.

**Q13. Will Disclosure Scotland be able to meet the expected high demand for processing CRC applications?**

A: We have discussed potential demand with Disclosure Scotland. Although there will inevitably be a spike in applications for CRCs, Disclosure Scotland are confident that they will be able to meet demand in line with their Service Level Agreement for returning applications. The agency routinely deals with between 100,000 and 150,000 applications per month. We will maintain a working dialogue with Disclosure Scotland in order to monitor progress as CRCs are being processed.

**Q14. What is the validity of a disclosure certificate (criminal record certificate) following its issue?**

A: Disclosure certificates, including those issued overseas, can be considered valid for up to 10 weeks from the date of issue. If an overseas criminal record certificate is more than 10 weeks old but the applicant has not returned to a country from which a CRC was obtained since the date of issue (the date of issue can be up to 10 weeks prior to their date of departure), that certificate will be deemed valid.

**Q15. I am a recruitment agency supplying staff to the aviation security industry. Are CRCs already undertaken transferrable from one role to another?**

A: No, disclosure certificates are only valid for 10 weeks from the date of issue. In the case of new contracts of employment or work placements of staff on the books of a recruitment agency whose CRCs fall outside the 10 week period, a new disclosure certificate must be obtained. This is on the basis that each new employer is legally responsible and accountable for an employee during the period of the contract of employment.

**Q16. I am a Known Consignor Security Manager. Am I affected by the new CRC requirements?**

Q: The NASP requires that a Known Consignor shall designate at least one person at each site responsible for the application and supervision of the implementation of security controls at that site, i.e. a 'Security Manager'. Security Managers appointed on or after 29<sup>th</sup> April 2010 are already required under the NASP to successfully complete a background check. Background checks will be required for all Known Consignor Security Managers, irrespective of the date of appointment, from 6<sup>th</sup> June 2012.

**Q17. I work for a Regulated Agent and am located in, or have access to, a warehouse where known screened cargo is stored. Do I need a CRC?**

A: This depends on the role undertaken. Personnel carrying out front-line security controls, such as the screening or guarding of cargo, are designated as SIA-licensable and are therefore subject to a CRC in order for the exemption to apply. Staff undertaking, for example, administrative, clerical or IT roles, or who may simply have access to secure areas of a warehouse where known screened cargo or other supplies are stored, whilst conducting other non-front-line roles, are not deemed to be SIA licensable. The activity of an individual 'handling' air cargo or other supplies who performs no security function (e.g. simply moving cargo or supplies from one area to another) would similarly be deemed not

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to be SIA licensable. In respect of both these examples of non-SIA licensable activity, a CRC is not required.

### **Q18. What is the definition of ‘guarding’ within the PSIA?**

A: The term ‘manned guarding’ originates from the PSIA and applies to any of the following activities:

- Guarding premises against unauthorised access or occupation, against outbreaks of disorder or against damage.
- Guarding property against destruction or damage, against being stolen or against being otherwise dishonestly taken or obtained.
- Guarding one or more individuals against assault or against injuries that might be suffered in consequence of the unlawful conduct of others.

All of the above includes providing a physical presence, or carrying out any form of patrol or surveillance. Please refer to Schedule 2 of the PSIA for a full description. For the purposes of the SIA licensing exemption under the NASP, such activities should be interpreted as those relating to the undertaking of an aviation security function.

### **Q19. What if my role is not strictly security-related?**

A: The SIA licensing provisions do not apply in respect of, for example, administrative or IT-related roles that do not entail discharging a security control function, i.e. those not designated as licensable under the PSIA and for which CRCs are therefore not required. If you remain in any doubt whether a particular NASP-regulated role is subject to SIA licensing and hence require a CRC to effect an exemption, please contact the Department or the SIA directly.

### **Q20. What if a criminal record certificate at basic disclosure level reveals an unspent disqualifying conviction?**

A: Where a person’s criminal record certificate lists a disqualifying conviction set out in the Department’s SCD (Schedule 11-1) – the Schedule is replicated at <http://www.dft.gov.uk/publications/crc-disqualifying-convictions-aviation/> - and the Secretary of State has not issued a Certificate of Disregard relating to that person in respect of that conviction, that person cannot successfully complete a background check and is therefore ineligible to work in a NASP-regulatory role.

### **Q21. What does the term “disposal” mean in the context of disqualifying convictions?**

A: “Disposal” is a generic legal term meaning that a court case or proceeding has been completed or has reached a resolution. In respect of a term of imprisonment, the disposal is the full sentence or prison term handed down by the judge or magistrate, not the actual time served. In other words, if a person has served 2 years out of a 3 year prison sentence, the time period to be taken into account in relation to a conviction for a disqualifying offence is 3 years.

**Q22. Can I appeal against a disqualifying conviction?**

A: You may appeal directly to the body that provided the disclosure certificate (Disclosure Scotland or Access NI) if you believe that the convictions shown are not yours or that the record is not yours, or that the conviction shown should be spent. You should use existing company grievance procedures if an employer has decided not to forward an application to a security clearance issuer because it believes that the disclosure shows that you have a disqualifying conviction. Where security clearance is provided by a separate security clearance issuer, you should use the appeals procedure operated by that issuer (e.g. the airport manager).

You may apply to the Department for Transport for a 'Certificate of Disregard' if you have a disqualifying conviction which you feel should be disregarded for the purposes of confirming a background check and issuing the necessary clearance for the specified role. The procedure for applying for a Certificate of Disregard is detailed on the Department's website at <http://www.dft.gov.uk/publications/personnel-security-aviation-crc#appealing>

**Q23. What action should an employer take if a criminal record certificate reveals a disqualifying conviction for an employee already in post who is awaiting a decision from the Department on an application for a Certificate of Disregard?**

A: From 6<sup>th</sup> June 2012, individuals undertaking NASP functions outside the SRA for which a CRC is required cannot continue in that role unless they have successfully completed a background check. Notification on a criminal record certificate of a disqualifying conviction would mean that a background check has not been successfully completed and would render an operative non-compliant with the NASP unless and until an application for a Certificate of Disregard is successful. An employer must therefore remove the employee from the NASP role (perhaps to another non-NASP activity) while the appeal is being determined by the Department. It is the Department's intention to issue a determination letter to the applicant within 28 days of the application. This is consistent with the process presently in place for individuals applying for an airside pass.

In all cases, a criminal record certificate remains valid for up to 10 weeks from the date of issue, but the period during which the Department is determining an application for a Certificate of Disregard (and during any subsequent appeal) will not count towards the 10 weeks.

**Q24. What, if any, involvement will the SIA have at airports going forward?**

A: The SIA will continue to regulate security functions that do not fall under the NASP. This means that roles undertaken such as by check-in staff (who ask relevant security questions), profilers and retail security staff at directed airports will remain under SIA regulation. All security roles in relation to General Aviation airfields will also fall under the remit of the SIA.

[ENDS]