



## Disclosure & Barring Service

### Information for employers and applicants.

On the 29 May 2013, legislation<sup>1</sup> came into force that allows certain old and minor cautions and convictions to no longer be subject to disclosure.

In addition employers will no longer be able to take an individual's old and minor cautions and convictions into account when making decisions.

All cautions and convictions for specified serious violent and sexual offences, and other specified offences of relevance for posts concerned with safeguarding children and vulnerable adults, will remain subject to disclosure. In addition, all convictions resulting in a custodial sentence, whether or not suspended, will remain subject to disclosure, as will all convictions where an individual has more than one conviction recorded.

### Changes to recruitment application forms

The DBS has been asked by employers whether or not they should amend their recruitment processes when asking about previous criminal offences to take account of these changes.

We can now advise that the Ministry of Justice suggest you should use the following question as a template for your own processes:

Do you have any convictions, cautions, reprimands or final warnings that are not "protected" as defined by the [Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975 \(as amended in 2013\)](#)

Job application forms, relating to positions for which a DBS check is requested, will need to reflect the filtering changes so that a) employers ask the right questions and b) employees give the right (legally accurate) answer.

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<sup>1</sup> See Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013; and Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2013.

Employers are encouraged to include the paragraph below (provided in agreement with the Ministry of Justice) in their standard application forms.

The amendments to the Exceptions Order 1975 (2013) provide that certain spent convictions and cautions are 'protected' and are not subject to disclosure to employers, and cannot be taken into account.

Guidance and criteria on the filtering of these cautions and convictions can be found on the [Disclosure and Barring Service website](#).

### **What does 'filtering' mean?**

Filtering is the term that the DBS uses to describe the process which will identify and remove protected convictions and cautions so that they are no longer disclosed on a criminal record certificate issued by the DBS.

### **What PNC information will be shown on a DBS certificate?**

Standard and Enhanced Criminal Record Certificates issued by the DBS will include details of convictions and cautions (which includes youth cautions, reprimands and warnings) recorded on the Police National Computer (PNC).

PNC information relating to protected cautions and convictions will now be filtered and will not appear on the certificate. Further information is available on the DBS website.

### **What PNC information will be filtered from inclusion on a certificate?**

The rules as to when a conviction or caution will be filtered are set out in legislation. This states that a certificate must include the following:

- Cautions relating to an offence from a list agreed by Parliament (see below)
- Cautions given less than 6 years ago (where individual 18 or over at the time of caution)
- Cautions given less than 2 years ago (where individual under 18 at the time of caution)
- Convictions relating to an offence from a prescribed list (see below)
- Where the individual has more than one conviction offence all convictions will be included on the certificate (no conviction will be filtered)
- Convictions that resulted in a custodial sentence (regardless of whether served)
- Convictions which did not result in a custodial sentence, given less than 11 years ago (where individual 18 or over at the time of conviction)

- Convictions which did not result in a custodial sentence, given less than 5.5 years ago (where individual under 18 at the time of conviction)

[A list of offences which will never be filtered from a criminal record check](#) has been derived from the legislation and is available on our website. The list includes a range of offences which are serious, relate to sexual or violent offending or are relevant in the context of safeguarding. It would never be appropriate to filter offences on this list. In addition, the legislation covers equivalent offences committed overseas. It is not possible to capture a definitive list of all equivalent offences under the law of all other jurisdictions. Where an individual is aware that they have committed an offence overseas which may be equivalent they should seek independent expert or legal advice] to ensure that they provide information that is truthful and accurate.

### **What other types of information are shown on Enhanced Certificates?**

In addition to information from the PNC, an Enhanced certificate may also include information taken from police records that a chief officer of a police force considers relevant to the application and ought to be disclosed, or details of whether an individual is included on one or both of our two lists barring people from working with children and/or vulnerable adults.

### **When did the rules change in relation to information being filtered?**

Changes have been made to the legislation that determines which convictions and cautions can be taken into account by employers and other bodies and what is included on a Standard and Enhanced Criminal Record Certificate issued by the DBS. These changes came into force on 29 May 2013.

### **What are the changes?**

The changes made to legislation impact both what an employer can ask an individual in relation to convictions and cautions (for example a self-declaration on an application form of 'do you have any convictions') and what is released on a Standard or Enhanced criminal record certificate issued by the DBS.

### **Can an employer ask an individual to declare details of all convictions and cautions?**

An employer can only ask an individual to provide details of convictions and cautions that they are legally entitled to know about.

Where a Standard or Enhanced certificate can legally be requested (where the position is one that is listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended) and where appropriate Police Act

Regulations (as amended) an employer can only ask an individual about convictions and cautions that are not protected.

If an employer takes into account a conviction or caution that would not have been disclosed they are acting unlawfully under the Rehabilitation of Offenders Act 1974.

### **Completion of the DBS Application Form –section e field 55**

When completing the DBS application form, a question will be asked at section e field 55 if the applicant has ever been convicted of a criminal offence or received a caution reprimand or warning. The response to this question should only be in relation to convictions or cautions which are not protected and thereby subject to filtering.

In conjunction with the Ministry of Justice, we have produced the following guidance for applicants and employers.

**Applicants completing e55 should treat this question as if they were being asked:**

***‘Do you have any convictions, cautions, reprimands or final warnings which would not be filtered in line with current guidance?’***

***Employers should make applicants aware of this advice in answering the question.***

### **Has eligibility for a DBS check been affected by these changes?**

No. [Eligible positions guidance](#) can be found on our website.

### **What if I don’t obtain certificates from DBS?**

There are a small number of defined positions where details of all convictions and cautions may be taken into account. These positions do not come through the DBS process. Some examples are police vetting and firearms licence applications.

If the position/occupation is covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 but not subject to a disclosure by the DBS, the employer is entitled to ask about, and receive information about, all spent convictions and cautions.

The employer should, however, follow existing guidance and conduct a case-by-case analysis of any spent convictions and cautions and consider how, if at all, they are relevant to the position sought.

It would be advisable for the employer to keep records of the reasons for any employment decision (and in particular rejections), including whether any spent convictions or cautions were taken into account and, if so, why. If the employee fails to disclose any spent convictions or cautions when required by law to do so, he/she will not be protected from the consequences of this (i.e. the ROA will not apply).

### **External guidance**

**Please use the links below to find out more about the range of services that can be provided by specialist organisations.**

[Nacro's Resettlement Advice Service](#) is the UK's dedicated, confidential, national resettlement helpline and online service.

They provide expert advice and advocacy to people with criminal records, as well as expert advice, support and training to employers and organisations responsible for interpreting and managing this information.

Nacro have developed sample [templates of criminal record declaration forms](#) that take account of the changes that you may find useful.

Further advice on filtering can be obtained on their [advice pages](#) which may be helpful to you.

Unlock is an independent award-winning charity, providing trusted information and advice services for people with convictions.

They run a confidential peer-advice helpline which supports people in overcoming the effects of their criminal convictions.

<http://hub.unlock.org.uk/contact/>

They also provide independent and impartial advice and support to employers and HR professionals that are receiving and/or making recruitment decisions based on criminal record information.

<http://unlock.org.uk/staticpage.aspx?pid=197>

Further advice on filtering can be obtained on their advice pages which may be helpful to you.

<http://hub.unlock.org.uk/knowledgebase/filtering-cautions-convictions/>

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