



## Disclosure & Barring Service

### Information for employers

On the 29 May, legislation came into force that allows certain old and minor cautions and convictions to no longer be subject to disclosure under the Exceptions Order.

In addition employers will not be able to take certain old and minor cautions and convictions into account when making decisions about any individual.

Under these provisions 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 will remain subject to disclosure.

Job application forms will need to reflect the filtering changes so that a) employers ask the right questions and b) employees give the right (legally accurate) answer. Employers are encouraged to include the paragraph below 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 convictions and cautions which should no longer be disclosed on DBS certificates due to changes to legislation.

### What will be shown on a DBS certificate?

Standard and Enhanced DBS certificates will include details of convictions and cautions (including youth cautions, reprimands and warnings) recorded on the Police National Computer (PNC).

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/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.

Some PNC information will now be filtered and will not appear on the certificate. Cautions and convictions filtered out are set out in legislation.

### **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 over 18 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 given less than 11 years ago (where individual over 18 at the time of conviction)
- Convictions given less than 5.5 years ago (where individual under 18 at the time of conviction)

The list includes a range of offences which are serious and which relate to sexual offending, violent offending and/or safeguarding. It would never be appropriate to filter offences on this list. [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.

This is not the complete list as the legislation also extends to cover similar offences committed under the law of Scotland and Northern Ireland or under laws relevant to the armed services.

### **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 DBS certificate. These have been implemented as a result of a judgment of the Court of Appeal. 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 DBS certificate.

### **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.

Where a Standard or Enhanced certificate can legally be requested (this is where the position is one that is listed in the Rehabilitation of Offenders Act 1975 (Exceptions) Order 1975), an employer can only ask an individual about convictions and cautions that would fall under the rules described above. That means only those convictions and cautions that would be disclosed on a DBS certificate.

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.

When completing the DBS application form, a question will be asked whether you have ever been convicted of a criminal offence. The response to this question should only be in relation to convictions which would not be subject to filtering.

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. Examples are national security and police vetting.

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 the 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 \(as amended in 2013\)](#)

### **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?**

If the position/occupation is not covered by filtering then 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, he/she will not be protected from the consequences of this (i.e. the ROA will not apply).

### **External guidance**

[Unlock](#) is an independent award-winning charity, providing trusted information and advice services to people with criminal convictions.

Their staff and volunteers combine professional training with personal experience to help others overcome the long-term problems that having a conviction can bring. Their knowledge and insight also helps them to work with government, employers and others, to change policies and practices to create a fairer and more inclusive society so people with convictions can move on in their lives.

Unlock have produced a [DBS Filtering Process guide](#) which may also be helpful to you.

[The DBS is not responsible for content on external sites]