

WHAT CRIMINAL RECORD INFORMATION CAN I OBTAIN?

Recruiting for jobs, roles or courses that are
subject to standard or enhanced DBS checks

Nacro's Criminal Record Support Service

nacro.org.uk

Registered charity no. 226171

INTRODUCTION

This guide is for organisations that recruit for jobs, roles or courses that require placements, which are exempt, or ‘excepted’, from the Rehabilitation of Offenders Act. These are the jobs, roles or courses in England or Wales which are eligible for a standard or enhanced Disclosure and Barring Service (DBS) criminal record check.

Please note that different rules apply if you are recruiting for jobs, roles or courses in Scotland or Northern Ireland.

SCHEMES OF DISCLOSURE

In England and Wales, there are two schemes of disclosure:

Self-disclosure

This is information that an employer or education provider can ask an applicant to provide in the form of a criminal record declaration. The information that you are entitled to ask and that an applicant is obliged to disclose depends on the type of role or course that they have applied for.

Vetting checks

This is the formal process by which you can verify the information that an applicant has self-disclosed. Most vetting checks in England and Wales are processed by the Disclosure and Barring Service (also known as ‘DBS checks’), but other types of vetting checks include security vetting such as Security Clearance, Developed Vetting, Counter Terrorism Checks among others. The type or level of check you can request depends on the specific job, role or course that you are recruiting for.

Due to recent changes in the law, it is important to understand that, sometimes, information that an applicant is legally obliged to disclose under the self-disclosure scheme may not necessarily appear on their DBS certificate. This is where the law can get a bit complicated. This practical guidance aims to provide a step-by-step approach to understanding exactly what information you are entitled to request and what information will be disclosed on standard or enhanced DBS certificates. It should be read in conjunction with **guidance published by the Ministry of Justice**.

For further comprehensive advice, support or training on DBS (or other vetting) eligibility, or **recruiting safely and fairly**, please contact Nacro’s **Employer Advice Service** on **0845 600 3194** or via email at **employeradvice@nacro.org.uk**.

SELF-DISCLOSURE

It is your responsibility to update your recruitment forms and online portals to ensure that:

1. You ask the correct criminal record declaration question in line with legal requirements
2. The question is not framed in a way which encourages the applicant to disclose more information that you are legally entitled to take into account when assessing their suitability for the role

Do I need to ask questions about criminal records?

No. There is no legal requirement to ask applicants about their criminal record. Certain sectors may have regulatory standards (e.g. to determine whether somebody is a 'fit and proper person' to hold a specific post) that requires a declaration of certain criminal record information, but for the most part it is up to you to decide whether and why you need to know about past misdemeanours.

When is a good time to ask about criminal records?

If you are going to ask applicants to declare their criminal record, you should do so in a way that encourages honesty. It is good practice to inform prospective applicants from the outset exactly what information will be requested from them and why, and at which stage of the recruitment process this information will be requested. The emphasis should be that the information will be used only to inform the overall assessment as to their suitability for the role, where it is relevant. Providing this information will help prospective applicants decide whether they would like to apply or not.

To determine when you should ask applicants to make a criminal record declaration, you need to think carefully about why you are asking for this information in the first place. You also need to consider exactly what information you will need in order to help you assess whether the criminal record is relevant to the role applied for and whether the applicant is suitable for the role. This will help you decide which stage of your recruitment process would be the most appropriate to get the information that you need.

Ideally, you should avoid requesting criminal record information during the initial application stage of recruitment (i.e. the application form or online portal). This will ensure that you first assess an applicant's suitability based on their skills, merits and experience. A simple yes/no declaration on an application form serves no helpful purpose as it will not give any information as to the context or circumstances of the offences which is necessary to inform your risk assessment.

Criminal record information is personal, sensitive data and therefore subject to data protection laws and regulations. It is difficult to justify the collection of criminal record data from all applicants when some may not even meet the requirements for the role.

For further information about data protection considerations, please read [our briefing](#): Data protection and the use of criminal offence data for the purposes of education and employment.

How should I word the criminal record declaration form?

This is very important because, if you fail to ensure that your recruitment forms and online portals are in line with legal requirements, you could face an applicant pursuing a civil claim, or prosecution by the Information Commissioner's Office.

For jobs, roles or courses which are exempt from the Rehabilitation of Offenders Act, you can legally ask the following questions:

1. Do you have any unspent conditional cautions or convictions under the Rehabilitation of Offenders Act 1974?
2. Do you have any spent adult cautions (simple or conditional) or spent convictions that are not 'protected' as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended)?

The law that governs what information is disclosed on standard or enhanced DBS certificates has changed (as outlined in the 'What is filtering?' section below). As a result of these changes and DBS operational processes, there will be some instances where an unspent conditional caution or conviction will be filtered from (i.e. not disclosed on) a standard or enhanced DBS certificate. This means that if you want to obtain all the criminal record information that you are entitled to take into account for exempt jobs, roles and courses, you need to ask both of the above questions.

Disclosure laws are complex and widely-misunderstood. It can also be very difficult to get accurate advice about what must be disclosed for different purposes. If you are requesting self-declarations as well as vetting checks, you should anticipate discrepancies between the two. It is important that you give applicants the opportunity to discuss any discrepancies and concerns you might have before making any final decisions about their suitability for the role.

In order to reduce the potential for under-disclosure, we recommend that you direct applicants to our **guide for applicants** and to our Criminal Record Support Service (call **0300 123 1999** or email **helpline@nacro.org.uk**) for advice about what they need to disclose. We have provided a sample policy statement in the box below, but please also refer to our template self-declaration form for jobs, roles or courses which are exempt from the Rehabilitation of Offenders Act in **Appendix 1**.

Example policy statement

The post you are applying for is 'exempt' from the Rehabilitation of Offenders Act 1974, so you are required to declare:

- All unspent conditional cautions or convictions under the Rehabilitation of Offenders Act 1974
- All spent adult cautions (simple or conditional) or spent convictions that are not 'protected' as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended)

The amendments to the Exceptions Order 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 **here**.

VETTING CHECKS: STANDARD AND ENHANCED DBS CERTIFICATES

Which jobs, roles and courses are eligible?

Jobs, roles or courses which are exempt from the Rehabilitation of Offenders Act are eligible for standard or enhanced DBS certificates. There is no single, comprehensive list of these roles, but they are set out in different laws including:

- The Rehabilitation of Offenders Act (Exceptions) Order 1975
- The Police Act 1997
- The Police Act 1997 (Criminal Records) Regulations

Note that these laws provide eligibility for standard or enhanced DBS certificates; they do not make them a legal requirement.

The following gives you an idea of the sort of jobs, roles or course placements that are eligible for DBS certificates. Please note that this is not an exhaustive list:

- Working in certain roles with children or vulnerable adults, or in certain environments where there is the opportunity for contact with them
- Working in certain regulated professions, such as healthcare, law, some senior finance roles
- Work that requires certain licences, including taxi drivers, Security Industry Authority, gambling

It can be difficult to know for sure whether the job, role or course you are offering is exempt from the Rehabilitation of Offenders Act. It is your responsibility to make sure that you only request standard or enhanced DBS certificates if you are legally entitled to do so. If you would like advice about this, please contact our **Employer Advice Line** on **0845 600 3194** or email **employeradvice@nacro.org.uk**. You might also find it useful to have a look at the **[DBS' online eligibility tool](#)** or, if you are recruiting for roles in healthcare, the **[NHS Employers eligibility tool](#)**.

What information is disclosed on standard and enhanced DBS certificates?

The Police Act 1997 sets out what information must be disclosed on standard and enhanced certificates. Both levels of certificate will disclose the following:

- Adult cautions (simple and conditional) which are not eligible to be filtered
- Juvenile and adult convictions which are not eligible to be filtered

An enhanced certificate may also include any other information that the police hold about the applicant, where they feel disclosure is justified in order to safeguard the children or vulnerable adults that they have applied to work with.

Most enhanced certificates do not disclose any police intelligence, but if the police are thinking about disclosing information that they hold about the applicant, they will write to you before the certificate is processed to let them know and to invite you to make representations against the inclusion of the information they have proposed to disclose.

The Safeguarding Vulnerable Groups Act 2006 (as amended) sets out the legal definition of regulated activity with **children** and **adults**. If you are recruiting for a role that is defined as regulated activity with children or adults, you are required by law to check if the applicant has been barred from working with the relevant group. These roles are, therefore, eligible for an enhanced certificate with a check against the relevant barred list.

The following table provides an overview of the information that may be disclosed on standard and enhanced DBS certificates.

Information that may be disclosed	Level of DBS certificate		
	Standard	Enhanced	Enhanced + barred
Adult cautions which cannot be filtered	✓	✓	✓
Juvenile convictions which cannot be filtered	✓	✓	✓
Adult convictions which cannot be filtered	✓	✓	✓
Police intelligence	X	✓	✓
Inclusion on the children's barred list	X	X	✓
Inclusion on the adult's barred list	X	X	✓

What is filtering?

Historically, if a role was 'exempt' from the Rehabilitation of Offenders Act 1974 (ROA), the recruiting organisation was entitled to know about the applicant's (or existing employee's) full criminal record history. This meant that all convictions, cautions, reprimands and final warnings held on the Police National Computer (PNC) were disclosed on standard and enhanced DBS (formerly 'CRB') checks until a person reached 100 years of age.

Following a legal challenge in the case of *T and another v Secretary of State for the Home Department and others*, on 29 May 2013, a filtering system was introduced which allowed for certain minor offences to be removed or 'filtered' from standard or enhanced DBS certificates. In practice, lots of people with criminal records did not benefit from the filtering system because the rules about what could be filtered were very limiting.

Subsequently, this legislation was challenged through the courts and in January 2019, the Supreme Court ruled that certain aspects of the filtering system were disproportionate. Revisions to the filtering rules were implemented on 28 November 2020 and the next section explains what information is now filtered from standard and enhanced DBS certificates.

What are the filtering rules?

For adults (aged 18+ at the time of conviction)

An adult conviction will be filtered from a standard or enhanced DBS certificate if:

- 11 years has elapsed since the date of conviction
- The conviction did not result in a custodial or suspended prison sentence
- The conviction does not appear on the list of **specified offences**

An adult caution (simple or conditional) will be filtered after 6 years have elapsed since the date of the caution, as long as the offence is not on the list of **specified offences**.

There is no limit to the amount of cautions or convictions that can be filtered, as long as they meet the above criteria.

For juveniles (under 18 at the time of conviction)

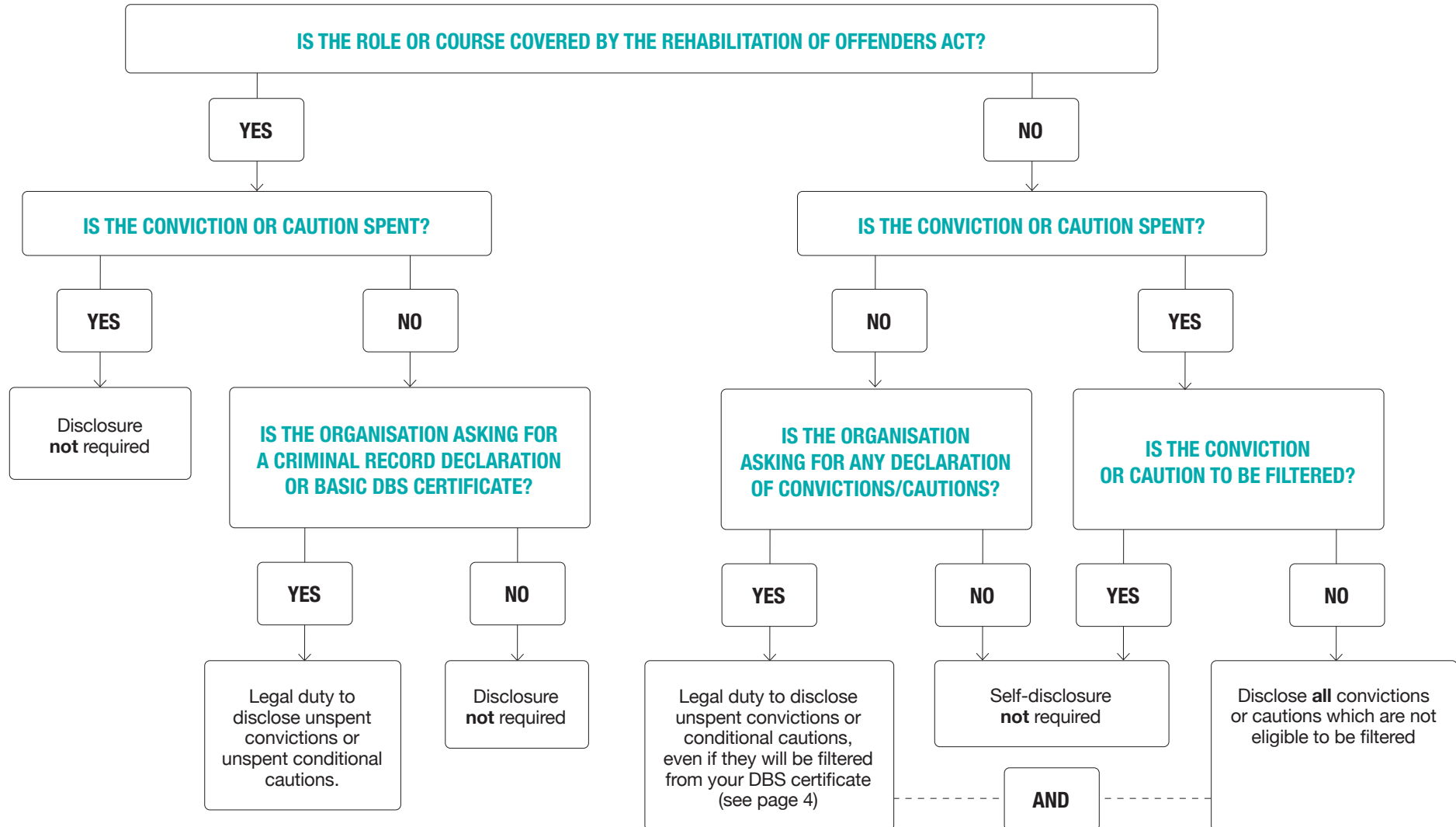
If you were under 18 at the time of conviction, your conviction will be filtered from your standard or enhanced DBS certificate if:

- 5½ years have elapsed since the date of conviction
- The conviction did not result in a custodial or suspended prison sentence
- The conviction does not appear on the list of **specified offences**

There is no limit to the amount of convictions that can be filtered, as long as they meet the above criteria.

Youth cautions (including conditional cautions), reprimands and final warnings are not disclosed on standard or enhanced DBS certificates, even if they are for offences on the list of specified offences.

Does the applicant need to self-disclose their caution(s) or conviction(s)?



FAQs

Does an applicant need to disclose filtered cautions or convictions for jobs that are subject to standard or enhanced DBS certificates?

In most instances, no. If their conviction(s) and/or caution(s), reprimand(s) and final warning(s) are eligible to be filtered, they do not need to disclose them for jobs which are subject to standard or enhanced DBS checks.

There are two exceptions to this:

1. If their conviction or conditional caution is still unspent under the Rehabilitation of Offenders Act and the recruiting organisation asks them for a criminal record declaration of unspent convictions or conditional cautions
2. If they are applying for a job that is subject to other types of vetting checks that are not processed by the DBS, e.g. applying to be a police officer, or for jobs in national security

Is the information that is disclosed on a basic DBS certificate always disclosed on a standard or enhanced DBS certificate?

At present, the DBS operational process does not consider whether a person's conviction (or conditional caution) is spent before applying the filtering rules.

So, in practice, an unspent conviction or conditional caution could be filtered from an applicant's standard or enhanced DBS certificate. An unspent conviction or conditional caution would always be disclosed on a basic DBS certificate while they remain unspent. This could result in a situation where, potentially, more information could be disclosed on an applicant's basic DBS certificate than on a standard or enhanced DBS certificate.

This is why we are recommending that where you are recruiting for an exempt post, you ask for a self-declaration of unspent convictions and a self-declaration of spent cautions and convictions which cannot be filtered (please refer to our template declaration forms in [Appendix I](#)).

If you wish to verify the information provided on the self-disclosure, you may have to request both a basic and standard or enhanced DBS certificate to ensure that you obtain all of the relevant criminal record information that you are legally entitled to.

Will I receive information relating to a fixed penalty notice or a penalty notice for disorder?

No. The filtering provisions relate to information that will be included on standard and enhanced DBS certificates that are of 'relevant matters' as defined by the Police Act 1997. 'Relevant matters' are convictions, cautions, reprimands and final warnings.

As fixed penalty notices and penalty notices for disorder do not fall under the definition of a 'relevant matter', they would not be automatically disclosed on a DBS certificate and, as such, are not subject to the filtering provisions.

Can a caution or conviction that has been filtered become unfiltered in the future?

No.

Can a caution or conviction that is eligible to be filtered be disclosed as police intelligence on an enhanced DBS certificate?

Yes. A chief officer may include details relating to an otherwise filtered conviction, caution, reprimand or final warning on an enhanced DBS certificate if s/he considers, having regard to all the circumstances, that it is relevant and ought to be disclosed.

Note that this only applies to applications for an enhanced DBS certificate; there is no such ability to include a filtered caution or conviction on to a standard DBS certificate.

Is filtering applied automatically when I use the online DBS Update Service?

No. The DBS Update Service is an online service that must be used in conjunction with an existing standard or enhanced DBS certificate.

The Update Service notifies organisations of cautions and convictions that a person has received since the date the existing certificate was produced. It does not notify organisations as to whether a caution or conviction that is currently disclosed on an existing certificate is eligible to be filtered, nor does it advise an organisation to get a new certificate in the event that the existing certificate discloses information which is now protected.

Organisations therefore run the risk of falling foul of the Rehabilitation of Offenders Act 1974 and data protection laws if they are using a DBS certificate that was issued for the purposes of the applicant's recruitment to a role other than the one they are recruiting for, to make suitability decisions. In particular where:

1. The certificate was obtained by an applicant's former employer; and
2. The certificate was obtained some time ago

If the recruitment involves an internal candidate and your organisation is relying on a DBS certificate that you have previously obtained to assess suitability, you need to make sure that you are not inadvertently processing information that you are no longer entitled to, as you will be in contravention of the law.

If my organisation uses the Update Service, should we request that an applicant provides an up-to-date standard or enhanced DBS certificate?

Technically there are no restrictions on how long a period an applicant that is signed up to the update service can rely on their existing certificate, provided they are working within the same workforce i.e. adult workforce or child workforce and no indication has been received from the DBS via the Update Service that a new certificate should be obtained due to the potential disclosure of 'relevant police information'.

However, where an applicant is asked to produce their existing DBS certificate and this discloses protected information that should otherwise be filtered, organisations are encouraged to apply for a new DBS certificate. This helps to ensure legal and regulatory compliance (where applicable) when it comes to the retention and use of criminal record information.

APPENDIX I.

CRIMINAL RECORD DECLARATION FORM FOR JOBS EXEMPT FROM THE ROA

You have been asked to complete this form because the role you have applied for is exempt from the Rehabilitation of Offenders Act 1974. The information disclosed on this form will not be kept with your application form during the application process.

Policy statement on recruiting applicants with criminal records

This post is exempt from the Rehabilitation of Offenders Act 1974 and therefore applicants are required to declare:

- All unspent conditional cautions or convictions under the Rehabilitation of Offenders Act 1974
- All spent adult cautions (simple or conditional) or spent convictions that are not 'protected' as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended)

For further information on filtering please refer to **Nacro guidance** and the **guidance published by the Ministry of Justice** (see, in particular, the section titled 'Exceptions Order').

We recognise the contribution that people with criminal records can make as employees and volunteers and welcome applications from them. A person's criminal record will not, in itself, debar that person from being appointed to this post. Any information given will be treated in the strictest confidence. Suitable applicants will not be refused posts because of offences which are not relevant to, and do not place them at or make them a risk in, the role for which they are applying.

All cases will be examined on an individual basis and will take the following into consideration:

- Whether the conviction is relevant to the position applied for.
- The seriousness of any offence revealed
- Your age at the time of the offence(s)
- The length of time since the offence(s) occurred
- Whether the applicant has a pattern of offending behaviour
- The circumstances surrounding the offence(s), and the explanation(s) provided
- Whether your circumstances have changed since the offending behaviour

It is important that applicants understand that failure to disclose all cautions, convictions, reprimands or final warnings that are not protected could result in disciplinary proceedings or dismissal. Further advice and guidance on disclosing a criminal record can be obtained from **Nacro's Criminal Record Support Service**.

NEED MORE HELP?

Contact our Employer Advice Service

Telephone: **0845 600 3194** (Monday–Thursday, 9am–5pm and Friday, 1pm–5pm)

Email: **employeradvice@nacro.org.uk**

Disclaimer

To the fullest extent permitted at law, Nacro is providing this guide and its contents on an “as is” basis and makes no (and expressly disclaims all) representations or warranties of any kind, express or implied, with respect thereto or to the information, content, products or services included, without limitation, warranties of merchantability and fitness for a particular purpose.

Whilst every effort has been taken to ensure the accuracy of the information, the content is naturally subject to change. In no event will Nacro be held liable for any direct, indirect, special incidental or consequential damage arising out of the use of the information in this guide.
