

Guidance

# DBS filtering guide

Updated 19 November 2020

Please note, the new filtering guidance applies to certificates issued on or after 28 November 2020.

## Introduction

This guidance relates to the filtering rules for DBS checks. For guidance on making or asking for self-declarations of criminal records, refer to the [Ministry of Justice](#) website.

Disclosure rules for criminal records are commonly referred to as “filtering”.

Filtering is the term we use to describe the process that identifies which criminal records will be disclosed on a Standard or Enhanced DBS certificate (DBS check). Certain old or minor offences may not be disclosed on DBS certificates. These are known as ‘protected’ offences.

There is a [list of offences](#) that will always be disclosed on a Standard or Enhanced DBS certificate (unless they relate to a youth caution). These are known as ‘specified offences’ and are usually of a serious violent or sexual nature, or are relevant for safeguarding children and vulnerable adults.

All convictions resulting in a custodial sentence, whether or not suspended, will always be disclosed.

Youth cautions, warnings and reprimands will not be disclosed automatically on a Standard or Enhanced DBS certificate.

## When did the law change in relation to what is disclosed on Standard and Enhanced certificate?

Filtering rules were first introduced on 29 May 2013 when amendments were made to legislation that affected 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 disclosed on a Standard or Enhanced DBS certificate.

These rules were updated on 28th November 2020 as follows:

- warnings, reprimands and youth cautions will no longer be automatically disclosed on a DBS certificate
- the multiple conviction rule has been removed, meaning that if an individual has more than one conviction, regardless of offence type or time passed, each conviction will be

considered against the remaining rules individually, rather than all being automatically disclosed

## **Updating your recruitment application forms for changes to the filtering rules**

Employers may wish to consider updating their recruitment processes to reflect the changes in the filtering rules.

Job application forms relating to positions that are eligible for a Standard or Enhanced DBS check will need to reflect the filtering rules so that:

- employers ask the right questions, and
- employees give the right (legally accurate) answer

We suggest that you use the following questions as a template for your own recruitment processes:

Do you have any unspent conditional cautions or convictions under the Rehabilitation of Offenders Act 1974? (Y/N)?

Do you have any adult cautions (simple or conditional) or spent convictions that are not protected as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2020? (Y/N)?"

You are also encouraged to include the paragraphs below in your standard application forms:

The amendments to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (2013 and 2020) provides that when applying for certain jobs and activities, certain convictions and cautions are considered 'protected'. This means that they do not need to be disclosed to employers, and if they are disclosed, employers cannot take them into account.

Guidance about whether a conviction or caution should be disclosed can be found on the Ministry of Justice website.

## **What Police National Computer (PNC) records will be disclosed automatically on a DBS Standard or Enhanced certificate?**

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

PNC records relating to protected cautions and convictions will not automatically appear on the certificate.

The rules regarding the automatic disclosure of convictions or cautions are set out in legislation. This states that a certificate must include the following:

Disposal	Age when given/sentenced	How long ago
Caution for specified offence	18 or over	Any time
Caution for non-specified offence	18 or over	Less than 6 years
Conviction for specified offence	Any age	Any time
Conviction resulting in custodial sentence	Any age	Any time
Conviction for non-specified offence	18 or over	Less than 11 years
Conviction for non-specified offence	Under 18	Less than 5 and half years

A ‘specified offence’ is one which is on the [list of specified offences](#) agreed by Parliament which will always be disclosed on a Standard or Enhanced DBS certificate, regardless of how long ago it was given. This includes where a specified offence receives a caution (but not youth cautions, reprimands or warnings).

The list includes a range of offences which are serious, relate to sexual or violent offending or are relevant in the context of safeguarding. The specified offences list covers those committed in England and Wales, however, the legislation also covers equivalent offences committed in other jurisdictions including overseas when they are recorded on the PNC. 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 outside England and Wales which may be equivalent to an offence on the list 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 disclosed on Enhanced DBS certificates?**

In addition to records from the PNC, Enhanced certificates 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 other vulnerable groups.

The disclosure of information taken from police records is subject to [statutory guidance](#) to which the police must have regard. In considering this guidance, the police may, in principle, disclose information about offences that have been subject to filtering if they believe the information is relevant to the workforce or position applied for and ought to be disclosed.

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

Employers 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 DBS check can legally be requested, an employer can only ask an individual about convictions and cautions that are not protected i.e. should be disclosed to employers. To be legally requested, a position must be included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and where appropriate, in the Police Act Regulations (as amended). Please refer to the [DBS eligibility guidance](#) for information on which positions this relates to.

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.

Employers should conduct a case-by-case analysis of any convictions and cautions disclosed 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 convictions or cautions were taken into account and, if so, why.

## **Completion of section e field 55 on the DBS application form**

The DBS application form contains a question at section e field 55 - 'Do you have any convictions, cautions, reprimands or final warnings which would not be filtered in line with current guidance?'

DBS will update this question on the application form as soon as possible to remove the reference to 'reprimands or final warnings'. In the meantime, the response to this question should not be in relation to reprimands or warnings. It should only be in relation to convictions or cautions which are not protected i.e. those that should be disclosed.

## **Positions where filtering does not apply**

There are a small number of defined positions of utmost integrity where details of all convictions and cautions may be taken into account. Some examples are jobs or activities relating to national security, the police, judicial appointments and firearms certificates. These positions do not receive criminal record information through the DBS process. Instead, employers and organisations considering a person's suitability are likely to have arrangements for direct access to the Police National Computer.

If the position/occupation is covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) but not subject to filtering, 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 as described above.

If the employee fails to disclose any spent convictions or cautions when required by law to do so in respect of these positions, the employer or organisation will be able to take the

convictions and cautions into account if they otherwise find out about them which may have consequences e.g. the withdrawal of a job offer.

## External guidance

Filtering guidance is also available from other organisations. DBS is not responsible for content on external sites.

### Nacro

[Nacro's Criminal Record Support 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 and details of the Rehabilitation of Offenders Act 1974.

You can read more about filtering on the [Nacro advice pages](#).

### Unlock

[Unlock](#) is an independent 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.

Unlock 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.

[Filtering and caution advice pages](#) are also available to view on the Unlock website

Guidance

## New filtering rules for DBS certificates (from 28 November 2020 onwards)

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This publication is available at <https://www.gov.uk/government/publications/filtering-rules-for-criminal-record-check-certificates/new-filtering-rules-for-dbs-certificates-from-28-november-2020-onwards>

Please note, these filtering rules apply to certificates issued on or after 28 November 2020.

## **What Police National Computer (PNC) records will be disclosed automatically on a DBS Standard or Enhanced certificate?**

The rules regarding the automatic disclosure of cautions and convictions on a DBS certificate are set out in legislation.

Standard and Enhanced DBS certificates must always include the following records no matter when they were received:

- All convictions for specified offences
- Adult cautions for specified offences
- All convictions that resulted in a custodial sentence

Other records must be included depending on when the caution or conviction was received:

- Any adult caution for a non-specified offence received within the last 6 years
- Any adult conviction for a non-specified offence received within the last 11 years
- Any youth conviction for a non-specified offence received within the last 5 and a half years

An ‘adult’ is any individual aged 18 or above at the time of the caution or conviction. A ‘youth’ is any individual aged under 18 at the time of the caution or conviction.

A ‘specified offence’ is one which is on the [list of specified offences](#) agreed by Parliament which will always be disclosed on a Standard or Enhanced DBS certificate where it resulted in a conviction or an adult caution. Youth cautions for specified offences will not be automatically disclosed.

Any cautions (including reprimands and warnings) and convictions not covered by the rules above are ‘protected’ and will not appear on a DBS certificate automatically.

Cautions, reprimands and warnings received when an individual was under 18 will not appear on a Standard or Enhanced certificate automatically.

Please note that Enhanced certificates may include information relating to a protected caution or conviction if the police consider that it is relevant to the workforce that the individual intends to work in. Decisions to include information in this way are subject to [statutory guidance](#).