

Legislation to consider

When requiring applicants to complete a self-declaration form, it is important that you are mindful of different pieces of legislation that affect the type of criminal record information you can obtain and act on, as part of your recruitment process. This includes:

- Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. There have been a number of significant changes to the Exceptions Order over time which have had an impact on what offences can legally be considered as part of any recruitment process. It is essential that all recruitment and recruiting managers familiarise themselves with DBS and other relevant guidance to ensure they remain compliant with the law and only consider information they are legally entitled to.
- The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 introduced the DBS filtering rules. The amendment enables certain spent or minor convictions and cautions to become protected (i.e. eligible for filtering) when specific conditions are met. Protected convictions and cautions are no longer disclosed in a standard or enhanced disclosure certificate and must not be considered as part of any recruitment decision.
- Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2013 (S.I. 2013/1198) which amends the definition of 'relevant matters' in the Police Act 1997. This amendment, which came into effect

from 29 May 2013, requires police forces to use a much more stringent assessment when considering whether non-conviction information is relevant to the position being recruited to and therefore should be included in a standard or enhanced disclosure certificate. Any decision to include non-conviction information is based on any potential risks identified to protect the vulnerable and/or where additional background information may prove invaluable to a prospective employer.

- Legal Aid and Sentencing and Punishment of Offenders Act 2012 - Section 139 of the Legal Aid and Sentencing and Punishment of Offenders Act 2012 (LASPO) made changes to the rehabilitation periods outlined in the Rehabilitation of Offenders Act 1974 which impacted on when a conviction or caution becomes spent and can be disregarded. Understanding when convictions and cautions become spent will be critical when considering recruiting to positions where a basic disclosure only can be considered.
- A further amendment in April 2013 introduced youth cautions and youth conditional cautions to replace reprimands and warnings. This refers to where a young person commits their first or second minor offence and has not been to court before. In such cases the police may consider issuing a Youth Restorative Disposal, a Police youth caution or youth conditional caution in place of requiring them to appear in court. Employers should check that any recruitment paperwork or practices do not refer to or ask for reprimands or warnings.
- Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2020 and the Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2020.
- These statutory instruments which amended the Exceptions Order and the Police Act came into force in November 2020. They reflected the Supreme Court judgment made in January 2019. The Supreme Court ruled that two aspects of the criminal records disclosure regime would contravene a person's human rights. In particular, the blanket rules which require the automatic disclosure of youth cautions, reprimands and warnings, and of multiple convictions. More information about protected convictions and cautions can be found in the criminal record check standard on the NHS Employers website.
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An additional change was made on 28 October 2023 under the Police Act 1997 (Criminal Record Certificates: Relevant Matter) (Amendment) (England and Wales) Order 2023) as follows:

all unspent conditional cautions and convictions (as defined by the Rehabilitation of Offenders Act) will be automatically disclosed.

This change ensures that all records that are disclosed on a basic check will also appear on standard and enhanced checks.

The various pieces of legislation which underpins employment check requirements including those under the DBS regime, are periodically subject to change, we therefore strongly recommend that you regularly review your local recruitment policies and processes to ensure they remain fully compliant with current legislation, including the Data Protection Act 2018 and the General Data Protection Regulation 2018).

This includes the handling, storage, retention and sharing of any information that might be disclosed by an applicant as part of their application or when providing a self-declaration using model declarations form A or B.