

Appendix 1

Legislative drivers

This appendix provides a brief outline of the different pieces of legislation which underpin checks under the DBS regime.

Employers may obtain full versions of each piece of legislation from the [UK legislation website](#).

Rehabilitation of Offenders Act 1974 (as amended in England and Wales)

Under the Rehabilitation of Offenders Act 1974 convictions and cautions can become spent after a specified period (known as the rehabilitation period). Rehabilitation periods vary depending on the sentence or order imposed by the court, not the actual offence.

Once a conviction or caution becomes spent (old) the ex-offender is not normally legally required to declare this information when applying for most jobs, volunteering activities, and education or training courses. However, to protect the vulnerable, certain professions within health, social care, and other sectors are exempt from these provisions under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended).

Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in England and Wales)

The Exceptions Order lists specific positions, professions, employment, offices, works and licences which are exempt from the provisions defined by Rehabilitation of Offenders Act.

This means that employers appointing individuals into any of the listed positions or professions are legally entitled to ask applicants to declare all spent and unspent convictions and cautions which are not protected by the DBS filtering rules and to take these into account as part of their recruitment process.

DBS filtering rules

The DBS filtering rules were introduced on 29 May 2013 under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

(Amendment) (England and Wales) 2013. From this date, certain spent or minor convictions and cautions are now protected (or filtered out) when certain conditions are met, and they will never appear in a DBS disclosure certificate.

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

- Warnings, reprimands, youth cautions and youth conditional 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.
- Employers must be careful to ensure that they do not inadvertently ask for or, consider information which falls under the DBS filtering rules and use this to make a recruitment or employment decision. Key considerations for employers can be found in **Appendix 2**.

An additional change was made on 28 October 2023 as follows:

- all unspent conditional cautions and convictions (as defined by the Rehabilitation of Offenders Act 1974) 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. Further information on the new filtering guidance can be found on the DBS website. Examples of filtering scenarios can also be found in the guidance.

Legal Aid, Sentencing and Punishment of Offenders Act 2012

On 10 March 2014, changes to the Rehabilitation of Offenders Act came into effect in England and Wales under Section 139 of the Legal Aid and Sentencing and Punishment of Offenders Act 2012 (LASPO). These changes impact on the period that needs to elapse before a conviction or caution can be considered spent.

Employers should ensure they are only asking applicants for information that they are legally permitted to seek. This is particularly relevant where recruiting to positions which are eligible for a basic disclosure (which requires individuals to declare unspent convictions only).

Police Act 1997 (as amended)

The Police Act 1997 (as amended in England and Wales) permits employers to obtain information about an applicant's spent convictions and cautions by requesting a standard or enhanced disclosure through the Disclosure and Barring Service (DBS).

Section 123 of Part V of the Act makes it a criminal offence for employers to require a standard or enhanced disclosure when considering appointments to positions which are not exempt (included in the Rehabilitation of Offenders Act (Exceptions) Order.

Further information about the different types of DBS check and eligibility can be found on earlier in this standard.

Police Act 1997 (Criminal Record Certificates: Relevant Matter) (Amendment) (England and Wales) Order 2023

This order outlines changes to the Police Act 1997. It was introduced in England and Wales on 28 October 2023 amending the definition of 'relevant matters'.

The amendments made by this order ensure that a conviction or caution that is not spent within the meaning of the Rehabilitation of Offenders Act 1974 will always be disclosed on standard and enhanced criminal record certificates.

Police Act 1997 (Criminal Records) (Amendment) Regulations 2013

The regulations outline when an enhanced criminal record certificate may be requested, including assessing an individual's suitability to work with adults and children by obtaining information against the barred lists.

Part V of the Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2013.

Changes to the Police Act were introduced in England and Wales on 29 May 2013 amending the definition of 'relevant matters'.

Relevant matters specifically refer to information that is not protected by the DBS filtering rules, and police forces can include when responding to a request for information through a standard or enhanced DBS disclosure.

This is because of the potential risk to the vulnerable, and where disclosing this information may add relevant contextual or background to a conviction or a caution which might be invaluable to an employer when they are considering applicants for specific roles.

Safeguarding Vulnerable Groups Act 2006

The Safeguarding Vulnerable Groups Act 2006 was created in direct response to recommendations made in the Bichard Inquiry into the Soham murders in 2002. The inquiry questioned the way organisations recruited people to work with vulnerable groups and the way background checks were carried out.

The Act provided the legal basis for setting up the Independent Safeguarding Authority (which was superseded by the Disclosure and Barring Service in 2012) and laid the original foundations for the Vetting and Barring Scheme (VBS). It set out the type of work and activities that an individual who has been barred must not do, known as regulated activities.

Changes under the Protection of Freedoms Act 2012

The Protection of Freedoms Act came into force in 2012 following a review into the criminal record system, which was led by the independent government adviser, Sunita Mason.

The following provisions were enforced under the Act:

- The establishment of the Disclosure and Barring Service (DBS) merging the functions of the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA).
- The introduction of a new definition of regulated activity reducing the scope of eligibility for enhanced checks with barred list information.
- The launch of the DBS update service which allows the portability of disclosure certificates where individuals are subscribed to the service.
- The introduction of a single DBS disclosure certificate which is only issued to the applicant to whom the information relates. Employer certificates are no longer issued as the norm.

- A stipulation that criminal record checks can only be obtained for individuals aged 16 years or over.
- The introduction of a more rigorous relevancy test which police forces need to apply when deciding whether to include non-conviction information in response to a disclosure request. This does not impact on their common law powers to share information where it is regarded necessary for safeguarding the most vulnerable
- Removal of the requirement for police forces to disclose additional information about applicants separately (known as 'brown envelope' information).
- A new representation process for individuals providing the opportunity for them to challenge inaccurate information contained in their disclosure certificate.

Data Protection Act 1998

On 10 March 2015 Section 56 of the Data Protection Act 1998 was fully implemented. This amendment was specifically put in place to prevent the misuse of Subject Access Requests (SARs).

From this date it became unlawful for an employer to require an applicant or existing member of staff (including workers supplied through an agency or contractor) to obtain a copy of their full criminal record directly from the police, probation service or courts by using their 'subject access' rights under the Data Protection Act, and then share it with them. This is known as an enforced subject access request. Any employer in England or Wales who carries out an enforced subject access request may now face prosecution by the Information Commissioners Office (ICO).

Employers in England and Wales must only request this information through a standard or enhanced disclosure via the DBS or a basic disclosure through Disclosure Scotland.

Changes to data protection from 2018

Employers will need to be aware of the changes which came into effect from 25 May 2018 under the General Data Protection Regulation (GDPR). The Regulation brought in a number of significant changes to how

organisations collect, handle and store information about staff as well as persons in receipt of health services.

More detailed guidance can be found on the [ICO website](#).