

Appendix 2

Filtering rules

A number of changes which were introduced from 29 May 2013 under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013.

These changes came into force following a Supreme Court judgment in 2013 that found the Police Act 1997 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 to be incompatible with a person's right to protect their private life under Article 8 of the European Convention on Human Rights.

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, and what is disclosed on a Standard or Enhanced DBS certificate.

These rules were updated on 28 November 2020 following a Supreme Court judgement in 2019 that found the statutory schemes for the disclosure of criminal records were disproportionate in two respects. The first was in relation to the rule that, where a person has more than one conviction of whatever nature, all convictions must be automatically disclosed in a criminal record certificate – irrespective of the nature of the offences, their similarity, the number of occasions involved, or the intervals of time separating them. The Judges held that this rule could not be regarded as a necessary or proportionate way of disclosing criminal records indicating a tendency to offend. Secondly, that the statutory scheme was disproportionate in the way it dealt with warnings and reprimands given to young offenders. They considered that such warnings and reprimands had a wholly instructive purpose and their use as an alternative to prosecution was designed to avoid any damaging effect on the young offender's subsequent life. It followed that disclosure to a potential employer would be inconsistent with that purpose.

As a result of the Supreme Court judgement, the filtering rules were updated on 28 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.

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. Further information on the new filtering guidance can be found on the [DBS website](#).

How it works

Filtering does not mean that information will be removed from the Police National Computer (PNC) and police forces continue to retain their common law powers to include information in the disclosure certificate where they reasonably believe it to be relevant to do so in order to protect vulnerable groups.

Under the filtering rules

Applicants do not need to declare any cautions or convictions that are protected, irrespective as to whether they are intending to engage in regulated activity.

It is unlawful for an employer to take protected cautions and convictions into account when making a decision to employ a person or dismiss an existing employee.

What it applies to

For adults (persons aged 18 or over at the time of the offence). An adult conviction will be removed from a DBS check when it meets the following three conditions:

- Eleven years have elapsed since the date of the conviction.

- The conviction did not result in a custodial or suspended sentence (any conviction resulting in a custodial or suspended sentence will always be included).
- The conviction does not appear on the list of specified offences relevant to safeguarding.

Adult cautions will be removed after six years have elapsed since the date of the caution and if it does not appear on the list of specified offences. There is no limit to the number of cautions that can be filtered.

For juveniles (persons under the age of 18 at the time of the offence):

A juvenile conviction will be removed from a DBS check when it meets the following two conditions:

- The conviction did not result in a custodial or suspended sentence (any conviction resulting in a custodial or suspended sentence will always be included).
- The conviction does not appear on the list of specified offences relevant to safeguarding.

Youth cautions and youth conditional cautions are no longer automatically disclosed on a DBS check as a result of changes to the filtering rules in November 2020.

The DBS has provided [guidance](#) outlining the type of criminal offences which would never be filtered from a disclosure certificate.

What this means for employers

Employers will need to ensure they regularly review their policies and recruitment processes to ensure they are not asking applicants for information they are not legally entitled to. This includes ensuring any information they may require as part of a request for a self-disclosure, application form, or during the interview process is in line with [Ministry of Justice guidance on self-disclosure](#).

Summary of updates

November 2023

- Amendments to **Appendix 1** and **Appendix 2** to reflect the changes to DBS filtering rules based on the updated legislation within the Rehabilitation of Offenders Act (1974) and Police Act (1997).

April 2023

- Updated **para 7.3.7** to align with Home Office guidance.
- Inclusion of additional information about regulated activity in **Section 9: Legal duties to refer to the DBS**.
- Standard reformatted to make it easier to refer to. Wording changed to make requirements clearer. Links updated throughout.

May 2022

- Inserted link to Home Office guidance on obtaining an overseas police check (**para 7.5.1**).

March 2022

- Standard reformatted to make it easier to refer to. Wording changed to make requirements clearer. Links updated throughout.
- We have amended examples of where employers may wish to ask applicants to obtain a basic DBS disclosure certificate (**para 2.1.2**).
- We have removed the section 'Reducing delays in processing applications.' This information is available as an [FAQ](#).

January 2021

- Pages 15 - 16: updated overseas police check requirements and removed subsections Recruiting from non-EEA and EU/EEA countries to make clear requirements when recruiting from outside the UK.

November 2020

- Update to reflect changes to DBS filtering rules.