

WHAT DO I NEED TO DISCLOSE?

Applying for a job, role or course that is 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 people who are applying 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 may require you to apply for a standard or enhanced Disclosure and Barring Service (DBS) certificate.

Please note that different rules apply if you are applying 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 asks you to provide in the form of a criminal record declaration. The information they are entitled to ask and that you are obliged to disclose depends on the type of role (or course) you have applied for.

Vetting checks

This is the formal process by which an organisation can verify the information you have 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 an organisation can request depends on the role you have applied for.

It is important to understand that, sometimes, you are legally obliged to disclose information under the self-disclosure scheme that may not necessarily appear on your standard or enhanced DBS certificate. This is where it gets a bit complicated. This practical guidance aims to provide a step-by-step approach to understanding exactly what you need to disclose and what you can expect to be disclosed on your DBS certificate. It should be read in conjunction with the Ministry of Justice **guidance on the Rehabilitation of Offenders Act 1974** (see, in particular, 'Exceptions Order').

For further comprehensive advice, support or training on disclosure, please contact Nacro's **Criminal Record Support Service** on **0300 123 1999** or email **helpline@nacro.org.uk**.

If you are an employer or education provider, please see our separate guidance 'What criminal record information can I obtain?'. You can also contact our **Employer Advice Service** by telephone on **0845 600 3194** or via email **employeradvice@nacro.org.uk**.

SELF-DISCLOSURE

Some organisations do not ask for any form of self-disclosure or criminal record declaration; some may only ask you to fill out a DBS (or other vetting check) application form.

However, many organisations will ask for some type of self-declaration. For jobs, roles or courses which are exempt from the Rehabilitation of Offenders Act, if asked for a self-declaration, you should disclose:

- All unspent conditional cautions and convictions
- Any spent convictions or cautions which meet the criteria as outlined in the table below:

Disposal	Age when given/sentenced	How long since given/sentenced?
Cautions for a specified offence*	18 or over	Any time
Cautions 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	Any age	Less than 11 years
	Under 18	Less than 5½ years

*The full list of specified offences can be found on the [DBS website](#).

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

1. Do you have any cautions or convictions which are unspent under the Rehabilitation of Offenders Act 1974 (as amended)?

For advice about how to answer this question, please refer to our guide:

The Rehabilitation of Offenders Act 1974.

2. Do you have any cautions or convictions which are not protected (i.e. filtered) under the Rehabilitation of Offenders Act (Exceptions Order) 1975 (as amended)?

For advice about how to answer this question, please refer to the above table and to the filtering guidance that starts on page 5.

The organisation may ask both questions, or only one or the other. Either way, it's important that you understand how to answer the question accurately because, if you fail to do so and this later comes to light, you could find that your job offer or course acceptance is withdrawn, or even that you face disciplinary proceedings or criminal charges.

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 applying for is exempt from the Rehabilitation of Offenders Act. If you would like advice about this, please contact our **Criminal Record Support Service** on **0300 123 1999** or email helpline@nacro.org.uk. You might also find it useful to have a look at the [DBS' online 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 you, where they feel disclosure is justified in order to safeguard the children or vulnerable adults that you 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 you, they will write to you before the certificate is processed to let you know and to invite you to make representations against the inclusion of the information they have proposed to disclose.

If you receive this type of notification from the police and would like advice about making representations, you can speak to us in confidence on **0300 123 1999** or at helpline@nacro.org.uk.

If you have applied to work in regulated activity with **children** or **adults**, your employer is required by law to check if you have 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 *T and another vs. 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 limited.

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.

Cautions and convictions that are eligible to be filtered will not appear on standard or enhanced DBS certificates.

What are the filtering rules?

For adults (aged 18+)

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)

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.

How do I work out if my caution or conviction is eligible for filtering?

STEP 1:

Apply for a copy of your police records (known as a subject access request)

You cannot apply for a standard or enhanced DBS certificate yourself, as they are processed in relation to a specific job or role. The DBS use the Police National Computer (PNC) to process certificates, so if you are not sure what information is held about you on the PNC, you need to find out.

You can apply for a copy of your police records **online**, free-of-charge. The police must respond to your request within 28 days of receiving the application.

STEP 2:

Assess the disclosure requirements of any cautions or convictions

Using the flowchart on page 8, you can work out if you need to self-disclose your cautions or conviction. Using the flowchart on page 9, you can work out if your cautions or convictions will appear on your standard or enhanced DBS certificate.

If you are not sure if your caution or conviction is eligible to be filtered, or if you want advice about what you should disclose, you can contact our Criminal Record Support Service in confidence on **0300 123 1999** or at helpline@nacro.org.uk.

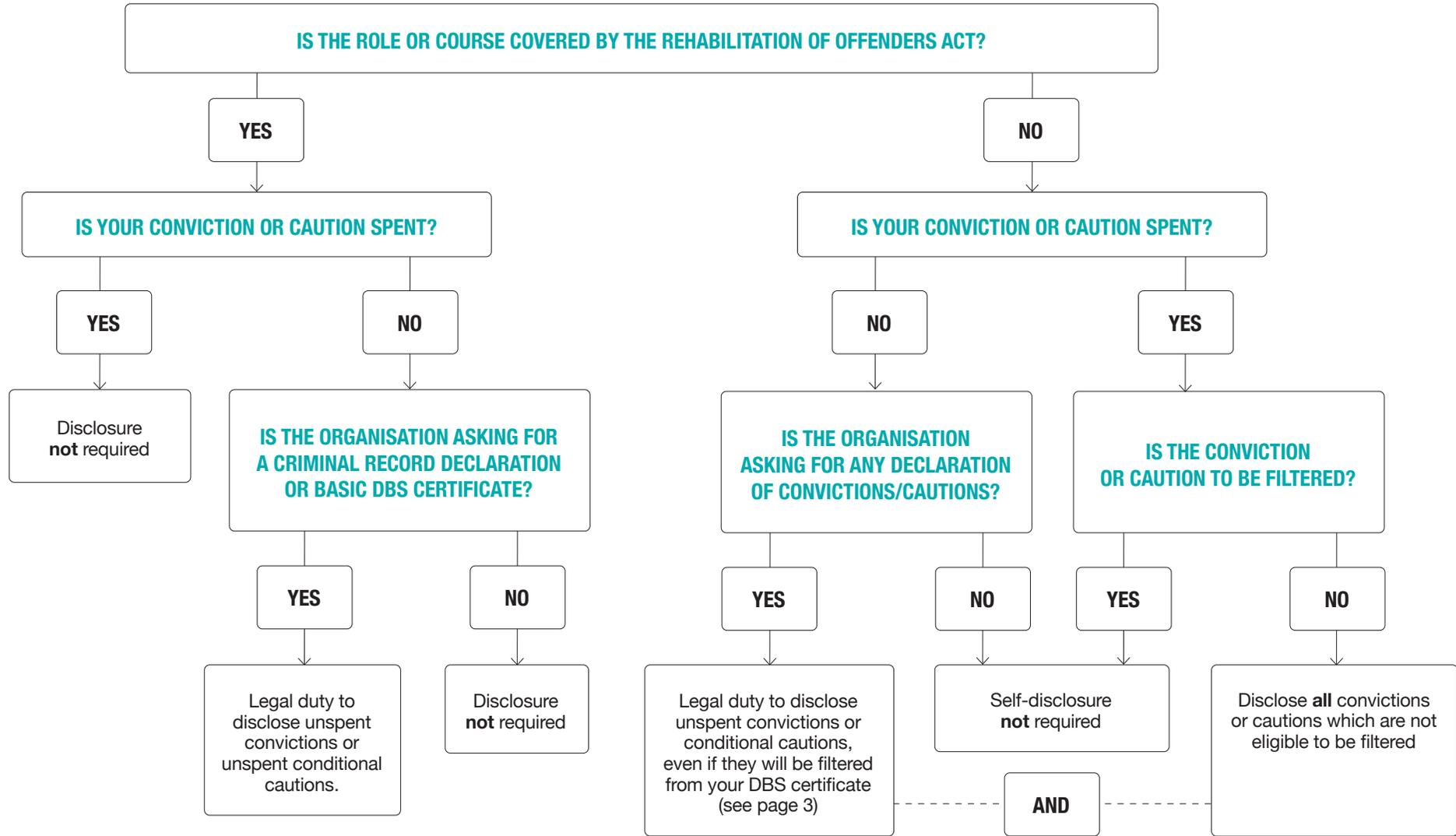
STEP 3:

Prepare disclosure if required

If you are required to disclose any convictions, cautions, reprimands or final warnings, we recommend that you prepare your disclosure using our [guidance on disclosure](#).

Again, if you need any help with this, you can contact our Criminal Record Support Service on **0300 123 1999** or at helpline@nacro.org.uk.

Do I need to self-disclose my caution(s) or conviction(s)?



If you need advice about when or how to make a disclosure, please refer to our [Disclosure guide](#).

FAQs

Do I need to disclose filtered cautions or convictions for jobs that are subject to standard or enhanced DBS certificates?

In most instances, no. If your conviction(s) and/or caution(s), reprimand(s) and final warning(s) will be filtered from your standard or enhanced certificate, you do not need to disclose them for job, roles or courses subject to these levels of checks.

There are two exceptions to this:

1. If your conviction or conditional caution is still unspent under the Rehabilitation of Offenders Act, you must disclose it.
2. If you apply for a job that is subject to other types of vetting checks that are not processed by the DBS, e.g. Developed Vetting (DV) required for certain Civil Service jobs that require you to have access to highly classified information.

I have more than one caution. Are they all eligible to be filtered?

Any number of cautions can be filtered from your record, as long as they meet the eligibility criteria.

I have more than one conviction. Are they all eligible to be filtered?

Any number of convictions can be filtered from your record, as long as they meet the eligibility criteria. This is one of the key changes brought about by the reforms in 2020.

Before 28 November 2020 if you had more than one conviction, none could be filtered. The updated legislation now allows multiple convictions to be eligible for filtering.

What are the rules for multiple convictions (or counts) dealt with in the same court proceedings?

If you have multiple convictions dealt with in the same court proceedings, any that are eligible to be filtered will be filtered and those that are not eligible to be filtered will remain on your standard or enhanced DBS certificate.

Take a look at the following example on the next page.

EXAMPLE

Wes has two convictions, one on 26 June 2007 for fraud and a second conviction on 01 October 2009, for three separate offences. His enhanced DBS certificate **before** the changes came in on 28 November 2020 looked like this:

Conviction details		
Conviction	Date of conviction	Court
1	26 JUNE 2007 GREEN, WESLEY	Blackfriars Crown Court
	Offence: FRAUD	COMMUNITY ORDER 12 MONTHS
2	01 OCTOBER 2009 GREEN, WESLEY	Blackfriars Crown Court
	Offence:	
	1 POSSESSION CLASS B	COMMUNITY ORDER 18 MONTHS
	2 ASSAULT OCCASIONING ACTUAL BODILY HARM	COMMUNITY ORDER 18 MONTHS CONCURRENT
	3 POSSESSION OF AN OFFENSIVE WEAPON	COMMUNITY ORDER 18 MONTHS CONCURRENT

All his convictions meet the criteria for filtering, with the exception of the assault occasioning actual bodily harm (ABH) count because ABH is on the list of specified offences that cannot be filtered.

After 28 November 2020, Wes' standard or enhanced certificate will look like this:

Conviction details		
Conviction	Date of conviction	Court
1	01 OCTOBER 2009 GREEN, WESLEY	Blackfriars Crown Court
	Offence:	
	1 ASSAULT OCCASIONING ACTUAL BODILY HARM	COMMUNITY ORDER 18 MONTHS CONCURRENT

What if I have cautions and convictions on my record?

As long as the cautions and convictions meet the eligibility criteria, both will be filtered from your standard or enhanced DBS certificate.

If the caution does not meet the eligibility criteria, but the conviction does, the conviction will be filtered and the caution will remain on your certificate.

If the conviction does not meet the eligibility criteria, but the caution does, the caution will be filtered and the conviction will remain on your certificate.

Take a look at the following example.

In 2012, Jon accepted a simple caution for criminal damage. In 2014, he was convicted of theft and received a fine.

Jon's caution will be filtered from his standard or enhanced DBS certificate as it was more than 6 years ago and the offence of criminal damage is not on the list of specified offences which cannot be filtered.

Jon's conviction will also be filtered from his standard or enhanced DBS certificate in 2025, 11 years from the date of the conviction.

Can an unspent conviction or conditional caution be filtered from my standard or enhanced DBS certificate?

Legally, unspent cautions and convictions are not eligible to be filtered. However, at present, the DBS operational process does not consider whether your conviction (or conditional caution) is spent before applying the filtering rules.

So, in practice, an unspent conviction or conditional caution could be filtered from your standard or enhanced DBS certificate.

To understand whether you need to disclose an unspent conviction or conditional caution that is otherwise eligible to be filtered, please refer to the diagram on page 8.

How are absolute and conditional discharges treated under the filtering rules?

Absolute or conditional discharge orders are given upon conviction of an offence (i.e. admitting guilt or being found guilty). For this reason, they do form part of your criminal record and will be treated in the same way as other convictions for the purposes of self-disclosure and filtering.

What if I have a hospital order?

For the purposes of filtering, a hospital order is not considered a custodial sentence. However, if a hospital order is the result of a conviction, it will only be filtered from your standard or enhanced DBS certificate if it meets the other filtering criteria.

What if I received a fixed penalty notice or a penalty notice for disorder?

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 released 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 not such ability to include a filtered caution or conviction on a standard DBS certificate.

NEED MORE HELP?

Contact our Criminal Record Support Service

Telephone: **0300 123 1999** (Monday–Thursday, 9am–5pm and Friday 1pm–5pm)

Email: **helpline@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.