



Safer Recruitment Update Jan 2021

Changes to Criminal Records filtering from 28th November 2020:

Important legal changes came into force from a judgement by the Supreme Court, which include:

- Cautions given to under 18s are no longer legally disclosed
- The multiple conviction rule has been removed so that each offence should be considered individually
- Applicants must be told how to get independent, confidential advice on which cautions or convictions they must disclose and be given time to obtain advice.

Enhanced DBS certificates will 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

A flowchart is attached to the end of the document to assist in decision making.

So what does it mean for schools and colleges?

Action 1: Change the wording about criminal convictions on the applications forms

Education providers need to ensure the wording on the application form regarding criminal records is legally compliant with the Supreme Court judgement.

The DBS suggests that the following questions are used as a template for recruitment processes:

Do you have any unspent conditional cautions or convictions under the Rehabilitation of Offenders Act 1974 [yes/no].

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 [yes/no].

The DBS also encourages employers to include the paragraphs below in 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 **NACRO** and **UNLOCK**.*



Filtering process flowchart, DBS vetting (NACRO)

<https://www.nacro.org.uk/news/nacro-news/dbs-filtering-regime-changes-to-come-into-effect-end-of-nov/>

What will be filtered by the DBS (UNLOCK)

<https://hub.unlock.org.uk/wp-content/uploads/What-will-be-filtered-by-the-DBS.pdf>

Action 2: Signpost people to sources of independent information and advice

- Applicants must be given information on where to obtain advice, for example, NACRO or UNLOCK (as above).

Action 3: For Self disclosures ask for criminal information after shortlisting, but before the interview

- Applicants must be given time to access this advice so the request for the **self declaration** of any criminal cautions or convictions should be **made only to shortlisted candidates and before the interview itself**.
- Applicants should not be asked verbally in the interview whether they have any criminal cautions or convictions that would prevent them working for children, as they will not have access to the advice they may need about what should be disclosed.
- Should any protected cautions or convictions be inadvertently disclosed, it is unlawful to take that information into account in suitability decisions.
- Information used to make interview and suitability decisions should be kept in case a legal challenge is made to the decision.

Retained information should include:

- Copies of Enhanced DBS certificates, self-declarations, interview notes, and risk assessments.
- The retention of this information must be specified in the organisation's data privacy notices and the data protection policy.
- Information for successful candidates should be kept for the duration of employment; for unsuccessful candidates, a retention period of six months should be sufficient.
- Although Keeping Children Safe in Education 2020 states that photocopies of DBS certificates should not be kept for more than six months, the DBS and the Information Commissioner's Office (ICO) agree that copies of certificates may be kept for this purpose.



DBS Update Service

Enhanced DBS certificates will not be reissued unless a new application is made. This means that when schools are shown original enhanced DBS certificates prior to checking with the DBS Update Service, the original certificate may show cautions or convictions that would have been filtered from 28th November 2020. These offences must not be used in any suitability decisions.

DBS Application Forms

The DBS application form question E55 will be changed as soon as possible to remove the reference to 'reprimands or final warnings'. Applicants should be told about this change before they complete the form.

[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.

[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.

Further Information

Guidance on the Rehabilitation of Offenders Act 1974 and the Exceptions Order 1974 (Ministry of Justice)

<https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974>

New filtering rules for DBS certificates (Disclosure and Barring Service)

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

DBS filtering guide (Disclosure and Barring Service/ Ministry of Justice)

<https://www.gov.uk/government/publications/dbs-filtering-guidance>

Filtering process flowchart, DBS vetting (NACRO)

<https://www.nacro.org.uk/news/nacro-news/dbs-filtering-regime-changes-to-come-into-effect-end-of-nov/>

What will be filtered by the DBS (UNLOCK)

<https://hub.unlock.org.uk/wp-content/uploads/What-will-be-filtered-by-the-DBS.pdf>

List of offences that will never be filtered from a DBS certificate (Disclosure and Barring Service/Home Office)

<https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check>

Flowchart

DBS Filtering Rules Flowchart - What should be disclosed?

