

# Convictions and spent convictions guidance

## **Enhanced or standard level DBS required**

Note that if it is a requirement of employment that an enhanced or standard level Disclosure and Barring Service (DBS) check is obtained for this post you must declare any criminal convictions, cautions, reprimands or final warnings unless these are 'protected' as defined by the Rehabilitation of Offenders Act 1974 (exceptions) order 1975 (as amended in 2013 and 2016).

Under previous exemption provisions you would have been required to declare all conviction information regardless of the nature, seriousness or age of the offences committed. The 2013 amendments mean that you are no longer required to provide details of a 'protected conviction' and the DBS will apply a 'filtering' process which will identify and remove protected convictions and cautions from the criminal record certificate issued to applicants.

However, the amendment in 2016 to the exception order includes any work done infrequently which, if done frequently, would be regulated activity relating to children within the meaning of Part 1 of Schedule 4 of the Safeguarding Vulnerable Groups Act 2006. A person's spent convictions and cautions may therefore be taken into account when assessing a person's suitability to engage in such activity even if they do not do so on a regular basis.

## **A conviction is a 'protected conviction' if:**

- it does not relate to a 'listed offence', such as violent and sexual offences no custodial sentence was imposed.
- the individual has no other convictions (where the individual has more than one conviction, all convictions will be included on the certificate).
- it was received by a person aged under 18 at the time of the conviction and five and a half years or more have elapsed.
- it was received by a person aged 18 or over at the time of the conviction and 11 years or more have elapsed.

## **A caution is a 'protected caution' if:**

- it does not relate to a listed offence.
- it was given to a person aged under 18 at the time of the caution and two years or more have elapsed.
- it was given to a person aged 18 or over at the time of the caution and six years or more have elapsed.

A 'listed offence' means that the offence is included on a list of offences which are serious, relate to sexual or violent offending or are otherwise deemed to be relevant in the context of safeguarding. These offences will never be October 2016 filtered

from a criminal record check. The legislation also covers equivalent offences committed overseas.

It is very difficult to provide a concise summary of all 'listed offences'; if you have received any criminal convictions or cautions at any time you should refer to the [DBS guidance and information on the GOV.UK website](#).

A past criminal conviction will not normally prevent you being considered for employment; it will be necessary to consider the nature of the conviction(s) and other relevant factors having regard to the position applied for. Any information received from your declaration or subsequent DBS certificate will be treated in a confidential manner and in accordance with the DBS Code of Practice.

It is very important that you do not withhold conviction information unless you have established that it meets the 'protected' criteria. You will see that if you have more than one conviction no protection will apply and details of all convictions must be provided.

In the event that you inadvertently provide us with details of a 'protected' conviction we are not permitted to use this information as the reason for not appointing you to the post.

Criminal record checks are carried out in accordance with the [DBS Code of Practice](#). You can read more on the GOV.UK website.

### **No DBS check required**

If the post does not require an enhanced or standard level DBS check you must still declare any 'unspent' criminal convictions that are not protected.

Certain criminal convictions can become 'spent' after a period of rehabilitation and do not have to be disclosed. Changes have recently been introduced in S.139 of the Legal Aid, Sentencing and Punishment Act 2012 which shorten the length of rehabilitation for custodial sentences.

Rehabilitation periods for custodial sentences now comprise the period of the sentence plus an additional specified period. For example, an offender sentenced to two and a half years custody, will have to disclose the conviction for the period of the sentence plus a further four years – giving a total rehabilitation period of six and a half years.

For more information on spent convictions, you can read the [How long do I have to disclose my criminal record for?](#) guide on the [hub.unlock.org.uk](#) website.