Unlocking Criminal Record Checks

A guide for people with a criminal record

Supported by

Disclosure & Barring Service

Produced by

UNLOCK

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Date: September 2013

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You can find out more about various terms used in this guide in the *Glossary.* Hyperlinks are provided to external sites. Unlock is not responsible for the content on external sites.

Publication date: September 2013

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Section 1 - About this guide

Who has this guide been produced by?

This guide has been produced by Unlock, an independent award-winning charity which provide trusted information and advice services to people with convictions. You can find out more at www.unlock.org.uk.

Who is this guide for?

This guide is for people who have a criminal record and are seeking employment in England & Wales.

It is designed to focus on the specific areas of interest that people with a criminal record may have. Where information is available elsewhere on some of the more general aspects of the criminal record checking process, this guide links to it, rather than repeat the same information.

Do I have a criminal record?

If you have:

- Been found guilty, or pleaded guilty, in a court[1], you *will* have a criminal record
- Received an official caution from the police, you *will* have a criminal record
- Ever been in trouble with the police, it's *possible* that you have a criminal record.

Things that don't result in a criminal record include:

- Being involved in civil court proceedings (e.g. bankruptcy, divorce)
- Being given an Anti-Social Behaviour Order (ASBO). However, if you have breached an ASBO this may have led to a criminal record.

The term *criminal record* is often used to refer to what is referred to in this guide as *local police records*. When the term *local police records* is used in this guide, it refers to information that is held locally by the Police which may be disclosed on an enhanced certificate. You can find out more about the terms used in this guide in the Glossary.

There is currently no standard definition of a *criminal record*[2]. For the purposes of this guide, the term *criminal record* means records of convictions, cautions, warnings and reprimands held on the Police National Computer. However, not everything that results in a caution or conviction gets recorded on the PNC. Whether your criminal record will be automatically disclosed depends on what is held on the Police National Computer and what is held on local police records.

There are various ways to find out about your criminal record. Unlock has produced a comprehensive guide setting out the various options – this is available to download from the Information Hub section of their website, www.unlock.org.uk.

[1] For some minor offences, e.g. driving without insurance, you might not have actually attended court in person. However, you should have received paperwork from the court providing details of the offence.

[2] The Home Office are currently working on an agreed definition

Why is this guide needed?

Access to employment is one of most important factors in the successful resettlement and reintegration of people with convictions into society. The Rehabilitation of Offenders Act 1974 (ROA) is designed to allow individuals who have not been re-convicted after a certain period of time to not have to disclose 'spent' convictions to employers.

The Government has recently made changes to the ROA so that custodial sentences of up to and including four years can become spent and, in most cases, reduce the time it takes for convictions to become spent. These changes are expected to be commenced in November 2013 once the necessary changes to systems and processes are in place. In the meantime, the current law remains in force. Revised guidance on the ROA will be published before the changes are commenced.

A significant number of employment positions are exempt from the ROA. Since 2002, organisations with vacancies for exempt positions have been able to obtain either a *standard* or *enhanced* certificate, depending on the role. These are commonly referred to as *CRB checks*. These certificates disclose all convictions, cautions, warnings and reprimands that are held on the Police National Computer. Enhanced certificates can also contain local police information, such as allegations and 'Not Guilty' findings. To ensure greater consistency and more targeted disclosure, changes to the *relevancy test* applied when deciding whether to disclose local police information were introduced in September 2012. Statutory Disclosure Guidance is available to download. More information is also available on the Unlock website.

A consultation was carried out in the early stages of this guide being produced to identify the specific areas of confusion. The common questions have been summarised below:

1. Which positions employers can legally request a criminal record check for as part of the recruitment process?
2. Where do I go to find out what positions can be subject to a check?
3. What types/levels of checks there are and what are the differences between them?
4. Which positions are entitled to which level of check?
5. What can be done when a check is requested for a position that appears not to be eligible?
6. What information is disclosed on certificates?

There has been a lot of interest in the criminal records regime recently and in particular on the level of vetting that employers must undertake. For example, there were specific recommendations around eligibility in Phase 1 of the Criminal Records Review undertaken by Sunita Mason[3] and published in February 2011. These recommendations included:

1. *"I recommend that where employers knowingly make unlawful criminal records disclosure applications the penalties and sanctions are rigorously enforced"* (Recommendation 8). In particular, she recommended that:

    a. *"where the CRB reasonably believe that an ineligible application has knowingly been made, the case should be immediately referred to the Information Commissioners Office for consideration of whether there has been a contravention of the Data Protection Act 1998. Notice should also be provided to the Ministry of Justice to consider*

[3] Ms Mason was the Independent Advisory for Criminality Information Management

whether a breach of the ROA has occurred"

b. *"the CRB should set up and fund a web-portal that allows individuals to report any potential or actual incidents where employers are seeking to make ineligible checks"*
c. *"the CRB should pro-actively review high-risk employers or associated Registered Bodies to ensure they adhere to their obligations and where appropriate the CRB should take steps to de-registere persistent offenders"*

2. *"I recommend that comprehensive and easily understood guidance is developed to fully explain the criminal records and employment checking regime" (Recommendation 10);*

It is important to note that the Government accepted (either outright or in principle) or agreed to consider, most of the recommendations. It rejected one specific recommendation regarding scaling back eligibility. The Government response to the full list of recommendations is detailed in their formal response. This report was then followed by the Phase 2 report from Sunita Mason.

The CRB's 2011/12 Annual Report provided details of work that had begun to develop processes to assist customers in submitting eligible applications. This guide explains these processes in more detail.

What does it cover?

This guide clarifies a number of areas with regard to criminal record checks, specifically for people with a criminal record.

This guide also details the Disclosure and Barring Service's (DBS) processes in relation to ineligible applications. It links this to what individuals should do when they suspect an employer is seeking to apply for an ineligible check.

Section 2 - About the Disclosure and Barring Service (DBS)

About this section

This section will explain what the DBS is and what types of criminal record checks they offer for employment purposes.

What happened to the CRB & ISA?

The Criminal Records Bureau (CRB) was an executive agency of the Home Office set up to help organisations make safer recruitment decisions. The CRB was established under Part 5 of the Police Act 1997 and was launched in 2002. The Independent Safeguarding Authority's (ISA) role was to help prevent unsuitable people from working with children and vulnerable adults. As a result of changes in the Protection of Freedoms Act 2012, the CRB and ISA were merged on the 1st December 2012 to form a new single organisation called the Disclosure and Barring Service (DBS). The DBS carries out the functions of the previous organisations (CRB and ISA).

What is the DBS?

The DBS provides criminal record checks and barring information to employers and other organisations in England and Wales (and barring information only in Northern Ireland) so they can make informed recruitment and licensing decisions, especially for employees and volunteers working with vulnerable groups. It also determines whether an individual can take up relevant posts by making decisions about inclusion on a barred list.

In 2009/10, 396,274 standard checks (10.3%) and 3,457,410 enhanced checks (89.7%) were carried out. In 2010/11, there were around 4.3 million checks issued, indicating increasing demand.

Recent changes

September 2012

- New definition reducing the scope of regulated activity (activity which people on a barred list cannot do)
- Repeal of planned provisions (never implemented) in relation to registration and continuous monitoring
- Repeal of controlled activity provisions
- Repeal of additional (brown envelope) information
- Minimum age (16) at which someone can apply for a DBS Check
- More rigorous relevancy test for when police release information held locally on an enhanced DBS Check

May 2013

- A system to filter old and minor cautions and convictions from DBS Checks.

In June 2013

- The Update Service, to enable subscribers to the service to reuse their DBS Checks within workforces.
- Issuing certificates to the applicant only to enable a person to check the information before it is presented to an employer.

Future changes

- Introducing a new barred list check and notification service in 2014.
- Improving systems for DBS Checks in relation to resolving disputes and representations.

Types of check

Summary

There are three types of criminal record checks; basic, standard and enhanced. These are summarised in the table and explained below.

Type	*Basic*	*Standard*	*Enhanced*
Legal name	Criminal Conviction Certificate	Criminal Record Certificate	Enhanced Criminal Record Certificate
Common name(s)	• Basic check • Basic disclosure • Basic certificate	• Standard check • Standard disclosure • Standard certificate	• Enhanced check • Enhanced disclosure • Enhanced certificate
Cost	£25 (Disclosure Scotland) £26 (Access NI)	£26 (free to volunteers)	£44 (free to volunteers)
Issuer	Disclosure Scotland / Access NI	Disclosure and Barring Service	Disclosure and Barring Service
Who applies	Individual	Registered Body / Umbrella Body	Registered Body / Umbrella Body
What it is for	All employment positions covered by the ROA	Positions exempt from the ROA by virtue of the Exceptions Order	Positions exempt from the ROA and listed in regulations made under the Police Act 1997
Types of positions eligible	• Government/civil service positions • Working in airports • Office work, • Hospitality industry • Retail, supermarkets • Personal licence to sell alcohol	• Security industry licence • Solicitor or Barrister • Accountant • Veterinary surgeon • FCA Approved Persons roles • Football stewards • Traffic warden • Membership of the Master Locksmiths Association	• Working with children and vulnerable adults • Teacher • Social worker • NHS professional • Carer • Taxi driving licences
What it discloses	All unspent criminal convictions (as defined by the ROA)	All convictions[4], both unspent and spent, held on the PNC that will not be subject to filtering	• All convictions, both unspent and spent, held on the PNC that will not be subject to filtering • Relevant information from local police records • Information held on DBS barring lists in relation to children and/or adults (if requested and if eligible)

[4] This includes convictions, cautions, warnings and final reprimands. It does not include fixed penalty notices, penalty notices for disorder, or any other police or other out-of-court disposal

Basic check – A Criminal Conviction Certificate

Any employer can request a basic criminal record check as part of the recruitment process for any job. You can also apply for a basic check yourself, even if you are not applying for a job.

A basic check reveals all criminal convictions that are unspent in accordance with the Rehabilitation of Offenders Act 1974 (ROA). This level of check is not currently offered by the DBS, although they do plan to provide this service for England and Wales in the future.

The basic check services offered by Disclosure Scotland and Access NI can be used in England and Wales. However, basic certificates are issued in accordance with the laws of that jurisdiction (e.g. Disclosure Scotland issues them in accordance with Scottish law). While in the majority of cases this will not cause any issues, there can be minor discrepancies which could cause disadvantage. For example, in England & Wales, compensation orders become immediately spent once the compensation is paid in full, whereas in Scotland they become spent after 5 years. Basic disclosure certificates will be made available in accordance with the law of England and Wales once the reforms to the ROA are commenced. This is expected to be in November 2013.

If you have the details of your criminal record and want to know what will be disclosed on your basic check, visit www.disclosurecalculator.org.uk.

Standard check – A Criminal Record Certificate

Positions that are exempt from the ROA are eligible for a standard check. You cannot apply for a standard check yourself. Applications must be made by a *Registered Body* or *Umbrella Body*.

These positions are defined in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, which lists occupations, professions and positions considered to be exempt from the ROA. The Exceptions Order is kept under review and amendments are made periodically, following careful consideration of the risks associated with a particular activity.

A standard check discloses all convictions, cautions, reprimands and final warnings that are held on the Police National Computer (PNC), regardless of whether they are spent or not, unless they are eligible for filtering (see below)

Enhanced check – An Enhanced Criminal Record Certificate

Positions that are exempt from the ROA and also meet one of the *prescribed purposes* in regulations under the Police Act 1997 are eligible for an enhanced check (see later for useful links on this). You cannot apply for an enhanced check yourself. Applications must be made by a *Registered Body* or *Umbrella Body*.

In addition to information disclosed on standard check, an enhanced check can disclose relevant information from local police records and other data sources, as well as whether the person is included in a DBS list of people barred from working in regulated activity in relation to children and/or adults. The disclosure of local police records is a decision for your local Chief Police Officer. Other data sources include CEOP (the Child Exploitation and Online Protection Centre) and the British Transport Police. Barring list information will only be disclosed if eligible and requested (see below section *For enhanced checks only - Information held on barred lists*).

What DBS checks reveal

The information disclosed on a DBS certificate depends on the level of check carried out. The table below summaries what is disclosed on each certificate. This section then looks at each different type of information in more detail.

Information	Basic (ROA)	Standard (Exceptions)	Enhanced (Police Act 1997)
Unspent convictions	Y	Y	Y
Spent convictions		Y (unless filtered)	Y (unless filtered)
Cautions		Y (unless filtered)	Y (unless filtered)
Approved information			Y
Childrens' Barring List			Y (if requested and eligible)
Adults' Barring List			Y (if requested and eligible)

Convictions, cautions, reprimands and warnings

When issuing a standard or enhanced certificate, the DBS discloses all convictions, cautions, reprimands and warnings that are held on the PNC, unless they have been filtered (see below).[5]

As a result, both standard and enhanced certificates will disclose the following: -

1. All convictions (both unspent and spent) that are recorded on the PNC
2. All cautions, reprimands and warnings recorded on the PNC

In addition to the information held on the PNC, enhanced certificates also provide information:

1. Held by local police forces (approved information); and
2. If eligible, whether the person is included in a DBS list of people barred from working in regulated activity in relation to children and/or adults.

[5] Under Part V of the Police Act 1997

Filtering

Filtering is the term that the DBS is using to describe the process which will identify and remove from disclosure certificates convictions and cautions which should no longer be disclosed due to changes to legislation. It doesn't mean the conviction or cautions will be 'removed' or 'wiped'. They will remain on the PNC.

Changes have been made to the legislation that determines which convictions and cautions can be taken into account by employers and other bodies and what is included on a DBS certificate. These have been implemented as a result of a judgment by the Court of Appeal. These changes came into force on 29th May 2013.

Cautions

A caution received when 18 or over will not be disclosed if six years have elapsed since the date of issue – and if it does not appear on the list of specified offences (which must always be disclosed).

A caution received when under 18 (i.e. their youth equivalent) will not be disclosed if 2 years have elapsed since the date of issue – but only if it does not appear on the list of specified offences (which must always be disclosed).

Convictions

A conviction received when 18 or over will not be disclosed only if:

- 11 years have elapsed since the date of conviction;
- it is the only conviction on record; and
- it did not result in a custodial sentence.

Even then, it will only be filtered if it does not appear on the list of specified offences which must always be disclosed. If there is more than one conviction on record, then details of all convictions will be disclosed.

For a conviction received when under 18, the same rules apply as for adult convictions, except that
the elapsed time period is 5.5 years

List of offences

The below table provides some common examples of offences that are eligible for filtering, and those which will always be disclosed. A link to the full list of offences that will never be filtered is below.

Eligible for filtering	Always disclosed
Common assault	Sexual offences
Drunk and disorderly conduct	Offences involving violence
Harassment	ABH/GBH
Theft (where no violence is involved)	Drugs offences that involve supply
Drugs offences that involve simple possession	

Guidance

Unlock has published detailed guidance on the DBS Filtering Process. This is available from www.unlock.org.uk.

The Disclosure & Barring Service has published their own guidance on the filtering process. Links to these are below:

DBS filtering guidance
Filtering rules for criminal record check certificates
DBS list of offences that will never be filtered from a criminal record check

Approved information (enhanced checks only)

In theory, enhanced DBS certificates may also contain information which is provided by the police from their local records. This is known officially as *approved information*. This can include allegations and findings of Not Guilty at court.

Unless you have already done so, you may wish to gain a better understanding of what information the police hold about you by making a Subject Access Request to the police force holding your information, under the Data Protection Act 1998. You must complete a Subject Access form and send payment of £10 with proof of identification to the relevant force. See the Annexes for more information.

In practice, to ensure greater consistency and more targeted disclosure, changes to the *relevancy test* applied when deciding whether to disclose local police information were introduced in September 2012. As a result, the Quality Assurance Framework was revised, and statutory guidance was issued to Chief Police Officers.

How the decision to release information is made

The Chief Police Officer in each force will decide what, if any, information to disclose on an enhanced certificate. They will first consider whether it is relevant, reasonable and proportionate. Relevancy means in relation to the specific workforce or specific position applied for.

Will I be able to see the information before it is released?

If you are entitled to make a case for not releasing the information, you will be contacted by the police before your certificate is issued. You will only normally be given opportunity to make a case for not releasing the information in the following circumstances: -

1. Where the information may be regarded as false, unreliable or out of date
2. Where the outcome is not known
3. Where you are unaware of the information held by the police and have never had opportunity to challenge it

Making representations if you are asked

If you are asked to make representations, it is really important that you do. The fact that you have been asked means that the police are considering disclosing some local information. The information you provide could result in the information not being released on your enhanced certificate.

The police will write to you outlining the proposed information for disclosure and give you the opportunity to provide your representations within 14 days. The Chief Officer will then consider any information provided by you in making their decision. If you don't provide representations, the information will be disclosed on your DBS certificate.

Making representations if you are not asked

There is no formal process to apply to make representations unless you are contacted by the police. However, some people have successfully made representations by writing to their local Police force's Disclosure Unit (or similar). There is no guarantee that you will be given the chance to make representations. However, if you would like to try, include the following when writing: -

- Notify the Police that you are applying for an enhanced check
- Request the opportunity to make representations if they are considering disclosing local information
- Refer to the specific information that you know is held (if you do not know

you may have to apply for a copy of your Police record in advance)
- Briefly explain why you should be able to make representations in terms of whether the information is relevant, reasonable and/or proportionate.

Disputes process

The DBS has a disputes process for when a DBS certificate contains incorrect personal details, where the information is incorrect, and where the applicant feels information from local police records included on a certificate is inaccurate or irrelevant

The DBS will investigate the dispute. If it is upheld, they will arrange for a replacement certificate to be issued. More information about the disputes process is available on the DBS website.

Disputes relating to the disclosure of local police information will initially be referred to the Chief Police Officer(s) to reconsider. If they decide to remove or amend the information as requested, a replacement certificate will be issued. If they decide not to remove or amend the information, the case will be referred to the Independent Monitor.

Independent Monitor Review

The Independent Monitor is a person appointed to review information disclosed by police forces on enhanced level certificates. They are independent from the DBS. If the Independent Monitor decides to uphold the dispute, they will direct that a revised replacement certificate be issued.

To contact the Independent Monitor email IndependentMonitor@homeoffice.gsi.gov.uk or write to:

Independent Monitor, Safeguarding and Public Protection Unit, Home Office
4th Floor Fry Building, 2 Marsham Street
London, SW1P 4DF

Other remedies

Once all other remedies have been exhausted you may wish to seek judicial review of the decision to include the non-conviction information on the certificate. Judicial review is a legal procedure by which a judge in the High Court is asked to rule on the legality of an action or decision by a public authority. Applications for judicial review should be made promptly and no later than three months after the decision by the Independent Monitor. It is strongly advisable to get legal representation from a solicitor with expertise in public law before making an application.

Barring list information (enhanced checks only)

If the role is eligible and the employer requests it on the application , enhanced checks provide details of whether you are barred from working in regulated activity with children and/or adults.

If and when a person is included in a DBS barred list they are informed of the bar and what it means in writing. If you are unsure as to whether you are barred on one or both lists, you can write to the DBS and they will write back to confirm either way. You will need to include proof of your identity. There is no cost for this service.

Under the Data Protections Act, you can apply to see a copy of the information that the DBS holds on you (including reasons why you are on a barred list). This is called a Subject Access Request or SAR and costs £10. To do this, contact the DBS and they will send you a form to complete.

How and when is information disclosed?

Once the application for a DBS check is processed, your criminal record will be disclosed on a DBS certificate. The DBS will send a copy to you. Certificates are no longer sent to the employer.

Single certificate

The DBS no longer automatically issue a copy of your certificate to the Registered Body who countersigned your DBS application form. Employers will need to ask you for sight of your DBS certificate.

Does the disclosure still get sent to the employer?

No, not normally. However, Registered Bodies will be entitled to ask the DBS for a copy of your DBS certificate if you don't provide them with an update certificate as a result of a change reported through the update service. For this to happen, all of the following conditions must apply:

1. You must be subscribed to the update service
2. The employer carried out a Status Check which revealed a change to the DBS certificate, and as a result;
3. You have applied for a new DBS check; and
4. The DBS issued the new DBS certificate to you more than 28 days ago; and
5. You have not shown the employer your new DBS Certificate

If you raise a dispute on the new Certificate, the DBS will not issue a copy to the Registered Body until 28 days after the dispute is resolved.

Can I apply for a certificate without a particular job or role secured?

Technically, no. However, once you've applied for a DBS certificate for a particular role, so long as you subscribe to the update service at application stage, or within 14 days of getting it, you'll be able to use this for future roles (assuming the same level of check is required)

Can any employer ask me to show them a DBS Certificate?

Technically, no. An employer is only entitled to ask for a certificate that is of the level that the job or position relates to. This means that any employer is entitled to ask to see a basic disclosure. Only roles or positions that meet certain eligibility are entitled to see a standard or enhanced level check.

However, in practice, people will increasingly 'own' their DBS check, and so individuals should exercise caution when asked to provide their DBS certificate to an employer where it relates to a position which may not be eligible for that level of disclosure.

Update service

The DBS update service lets you keep your DBS certificates up to date online and allows employers to check online to see whether there are any changes to the certificate that you have shown them. The service costs £13 (free for volunteers). This means you will be able to take your DBS certificate with you from role to role, within the same workforce, where the same type and level of check is required.

Who can carry out a Status check?

An employer doesn't have to join the Update Service, or pay a fee, to check a DBS Certificate. You will be able to check who has carried out a Status check on you.

What does an employer need to do to carry out a Status check?

- Have your consent either verbally or in writing
- See the original Certificate to check it is the same type and level as they are legally entitled to, make sure that the right checks have been carried out and see what, if any, information was disclosed about you
- Check your identity.
- Check your name on the DBS Certificate matches this identity.
- Note the DBS Certificate reference number, your name and date of birth.
- Comply with the DBS Code of Practice; which includes having a policy on the recruitment of ex-offenders (a sample is available from the DBS publications section at www.gov.uk/dbs), and make this available to you

Can I stop an organisation checking the status of my DBS Certificate?

Yes. You will need to contact them and withdraw your consent for any future checks. If they fail to stop they would be breaking the law by accessing data they were not entitled to see. If they persist you could remove the DBS Certificate from your account but this would also mean other organisations would not be able to carry out a Status Check on it. If they persist, you should contact the Information Commissioner's Office.

This means that, broadly, you should be careful who you give your consent to. If you were to withdraw your consent, if you think they would continue to check (even though it would be against the law) you'd have to remove the Certificate from your account. Given you cannot then add it back onto the account again, you would have to apply for a new check.

Will filtering change the status of my Certificate?

This would not cause a status change through the Update Service. A status change is only prompted when there is new information to be added, or an offence needs to be changed or amended, or because you have become barred, whereas an offence being filtered out would mean a removal of information from your Certificate.

If you wish to have a new DBS Certificate which does not show the offence that has been filtered out, you will need to apply for a new DBS check.

Given that, once something is filtered, you no longer need to disclose it, if you have a DBS Certificate with something on it that has since been filtered, it would be sensible to apply for a new certificate.

Section 3 - Eligibility

About this section

This section explains the employment circumstances in which each type of check can be undertaken. It also explains how you can find out whether a specific position is eligible for a check.

Why does it matter?

When recruiting, employers are not required to state whether they intend to carry out a criminal record check or what level will be applied for. Employers often don't think to make this clear because they assume it will not concern the majority of applicants. However, if you have a criminal record, it can be the most important part of the recruitment process.

For people with a criminal record

An employer undertaking the wrong level of check can have a huge impact. For example: -

- If your criminal record is spent, it would not be disclosed on a basic certificate but would be disclosed on a standard or enhanced certificate.
- If the police hold information about you locally, this wouldn't be revealed by a basic or a standard certificate, but may be disclosed on an enhanced check.

Once a criminal record check is carried out and your employer has the relevant information, it is very difficult to stop them from applying the information to a recruitment or dismissal decision.

For employers and registered bodies

Registered Bodies (RBs) are required to comply with the DBS Conditions of Registration. This states that they must use all reasonable endeavours to ensure that each individual application submitted is eligible for level of check requested.

The DBS service is underpinned by law. When an RB signs the declaration on the application form, they are confirming that the position is eligible for a check. It is a criminal offence to knowingly submit an application which is not eligible, and this covers employers who use Umbrella Bodies to submit applications on their behalf.

Common roles

Type of check	*Basic*	*Standard*	*Enhanced*
Common positions eligible	• All employment positions • Government/civil service positions • Working in airports • Office work, • Hospitality industry • Retail, supermarkets • Personal licence to sell alcohol	• Security industry licence • Solicitor or Barrister • Accountant • Veterinary surgeon • FCA Approved Persons roles • Football stewards • Traffic warden • Membership of the Master Locksmiths Association	• Working with children and vulnerable adults • Teacher • Social worker • NHS professional • Carer • Taxi driving licences

Categories of eligibility

The types of positions which may be eligible for standard or enhanced checks are contained in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. These can be divided into five broad categories: -

1. **Professions:** e.g. medical practitioners, barristers, accountants, vets and opticians
2. **Law & Order:** Those employed to uphold the law or involved in the criminal justice system (e.g. judges, constables, prison officers and traffic wardens)
3. **Certain Regulated Occupations:** (e.g. firearms dealers, directors of insurance companies, those in charge of nursing homes and taxi drivers)
4. **Health and Social Care:** Those who work with children, those whose work is concerned with the provision of care services to vulnerable adults and those whose work is concerned with the provision of health services (e.g. care home worker, social worker)
5. **National Security**: Those whose work could put national security at risk (e.g. air traffic controllers and certain employees of the Crown)

The DBS's Eligible Positions Guidance provides details on the positions that are eligible for a standard or enhanced check. It is not comprehensive and only gives an indication of the general types of employment that are included in the Exceptions Order.

Positions which fall inside these categories are not guaranteed to be eligible for a specific level of check. Positions may vary in their role and responsibilities, which could affect their eligibility.

Eligibility web tool

The DBS is developing an “Eligibility tool” to help individuals, registered bodies and employers find out if they are entitled to a DBS check and if so at what level.

This is planned for launch in late 2013 and will be available via the DBS website. The tool will ask the user a series of questions and then determine if the position is eligible for a DBS check. The results can be printed out and used if there is a difference of opinions about the level of check carried out.

The Establishing Eligibility Process (EEP)

In advance of the launch of the Eligibility tool, the Establishing Eligibility Process (EEP) has been developed by Unlock to help you establish what type of check a particular position is eligible for. This will help you to challenge an employer if you don’t believe they are entitled to carry out a particular level of check.

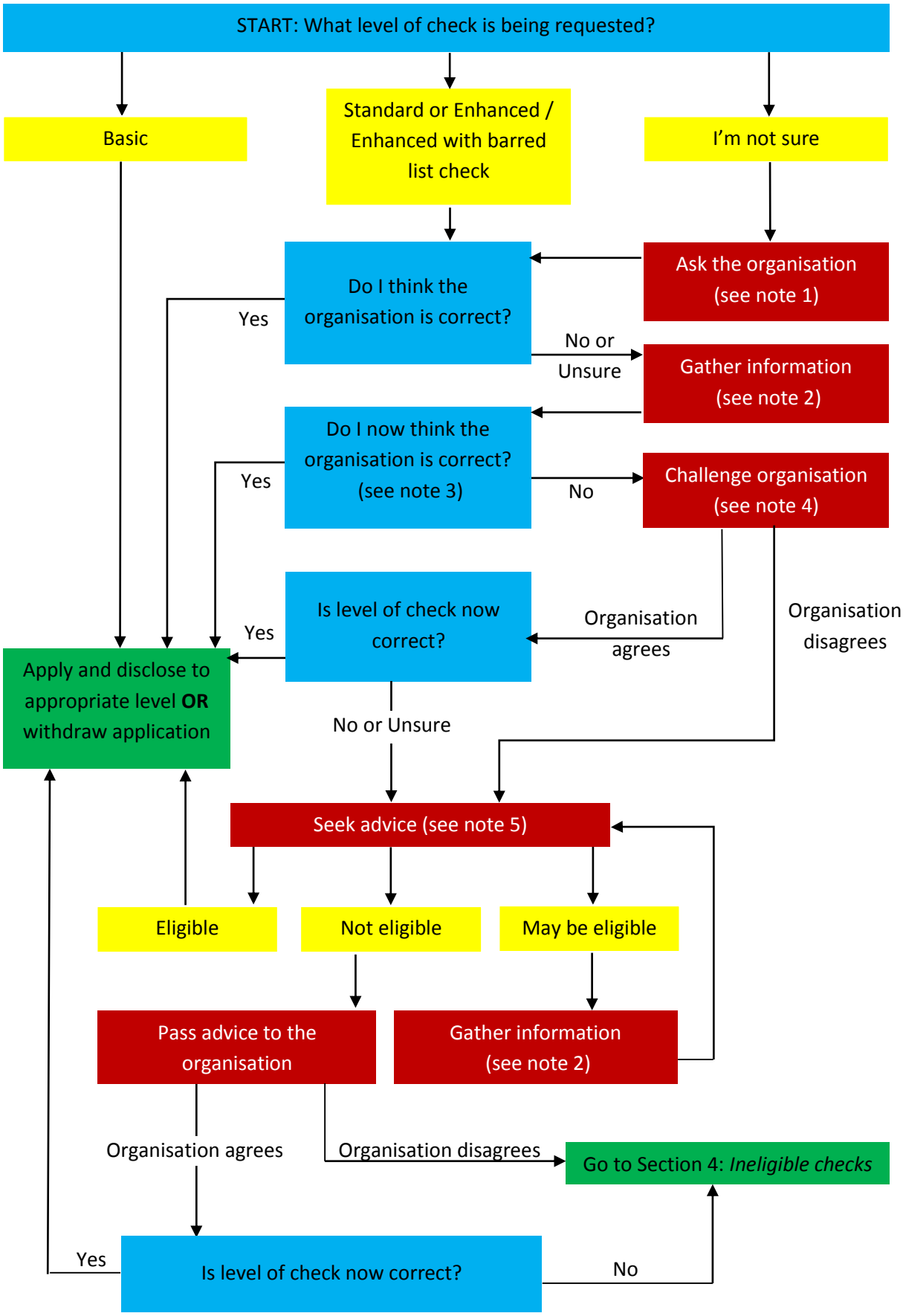
Using the EEP

The EEP is provided overleaf as a simple flow-chart. Some sections have more detailed guidance and these are clearly labelled e.g. ‘see Note 1’. To find out more about these steps, go to the relevant section in the following pages.

The EEP is designed to be used **before** an application is made for a criminal record check when you’ve been told that a certain type of check will be carried out and you are unsure about whether it is eligible

Key Ask | Choose | Act | Result

EEP Flow-chart



Note 1 – Ask the organisation

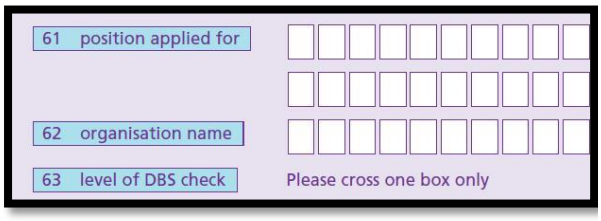
Check their paperwork

Most organisations provide details if they require a check for a specific position. Look for any mention of criminal record checks in the job description, role specification and any other information they have provided.

Check their website

Look for the organisation's employment policies. The DBS Code of Practice requires organisations who use the DBS service to include a policy on the recruitment of people with convictions. Look to see if they have a policy on which roles require a check.

Check the DBS application form



If the organisation has already given you a DBS application form to complete, look at question X-61 (position applied for). This is normally completed by the Registered Body (RB) after you have completed the form. If it has already been completed, make sure it matches the specific job that you have applied for.

It is important to check this because the DBS do not ordinarily query eligibility based on the answer to this question unless it has been brought to their attention.

Remember that a position which may not seem eligible (e.g. "administrator") may be eligible due to other circumstances. The RB should give as much detail as possible (e.g. "school administrator").

Contact the organisation

Asking the organisation directly can be the quickest way to find out which type of check will be required (if any). However, if you don't do this anonymously, you may raise suspicion that you have a criminal record.

Next steps

- **If you believe the organisation is right:** You need to decide whether to give your consent to the check. You are not legally obliged to give your consent but if you refuse the employer will normally reject your application for the job. If you decide to give your consent, read *Section 5: Completing a criminal record check application* for more information.
- **If you are not sure whether they are right or wrong:** Go to Note 2 (below)
- **If you believe the organisation is only entitled to a lower check:** Go to Note 2 (below)
- **If you believe the organisation is actually entitled to a higher check:** Proceed with your application. Read Section 5: *Completing a criminal record check application* for guidance. Consider that the employer may insist on the higher level at a later date and put you in a difficult situation. Whilst you may be able to refuse, you may want to disclose now if you want to avoid an issue at a later stage.

Note 2 – Gather more information

Use the Establishing Eligibility Form

Some job titles are often assumed to make the role eligible for a specific level of check. For example, a "Teacher" might be assumed to be eligible for an enhanced check. However, a teacher in a University (such as a Lecturer) would normally only be eligible for a basic check.

Equally, some job titles are assumed to make the role *ineligible* for a specific level of check. For example, an "Office Assistant" might be assumed to be ineligible for an enhanced check but might be eligible for one if working in a school or care home.

To understand what level of check the position is eligible for, you need to find out as much information about the role as possible. Annex A: *Establishing Eligibility Form* provides a set of standard questions for which you should try to get answers.

Next steps

- Go to Note 3.

Note 3 – Decide for yourself

The answers to the questions in Annex A: *Establishing Eligibility Form* should give you the information you need to establish eligibility or take the matter further if necessary.

The DBS is developing a web-based Eligibility Tool which is planned for launch in late 2013. You will be able to use the information that you have gathered to find out what type of check the position is eligible for. In the meantime, you will need to try to decide for yourself which level of check the position is eligible for.

Next steps

- **If you believe the organisation is right**: You need to decide whether to give your consent to the check. You are not legally obliged to give your consent but if you refuse the employer will normally reject your application for the job. If you decide to give your consent, read Section 5: *Completing a criminal record check application* for more information.
- **If you think that the organisation is wrong:** Go to Note 4.

Note 4 – Challenge the organisation / Registered Body

Raise the issue with the organisation

The organisation may be a Registered Body itself or may have made the application via an Umbrella Body. In either case, you should raise your concerns with the organisation first.

When you contact them, you will need to be careful not to raise suspicions that you have a criminal record. Who you will need to speak to will vary but it will normally be somebody with recruitment or personnel responsibilities.

You may want to initially *speak* with the organisation. However, if they insist that the position is eligible you should raise your concerns in *writing*[6] and ask for a written response. This is so you have evidence which you may need to use later on. Remember to be aware that you may be identified if you share your personal information.

You should detail the reasons why you feel that the position is not eligible for the type of check being requested. Annex B provides a *Template letter to employer regarding eligibility*. Some things you might want to consider are: -

- The organisation may already be aware of your concerns from your earlier questions
- You may want to refer them to the DBS Eligibility Tool (once launched) as a subtle way of making them aware the position doesn't appear to be eligible. Try to appear helpful.
- Ask them to reconsider undertaking a check
- State what level of check you think the position is eligible for and offer to apply for it
- Ask for a response in writing including reasons why they made the decision that they have.

Raise the issue with the Umbrella Body

If the organisation is not a Registered Body, you need to repeat the above with the Umbrella Body that they are using. They are the ones who are legally responsible for making the declaration about the eligibility of the check on the DBS application form.

Bear in mind that the Umbrella Body may not be fully aware of the details of the role. They will only know what the employer has told them. However, if you raise a query with them, they should be able to look into it and get back to you.

Next steps

- **If they agree and decide to undertake a different level of check:** If you decide to give your consent, read Section 5: *Completing a criminal record check application* for more information. If you disagree with the new level of check being proposed, repeat Note 4.
- **If they disagree:** Go to Note 5.

[6] When we use the term 'in writing', this covers both by letter and by email. You should always keep a copy of anything that you send or receive.

Note 5 – Seek advice

If after all of the above steps a check is still being required for a position you don't think is eligible, you should seek some advice about what to do next. When seeking advice, try to provide as much information as possible, including a completed 'Establishing Eligibility' form.

However, you should also ask yourself whether, if successful, you would be in a better position. For example, if your convictions are unspent, even if you managed to show that the organisation isn't entitled to an enhanced check, they'd still be entitled to a basic, which would show your unspent convictions.

General advice from the Ministry of Justice

The Ministry of Justice (MoJ) has policy responsibility for the Rehabilitation of Offenders Act 1974 and Exceptions Order 1975. You can seek advice from the MoJ on the eligibility of a position. See Annex C for their contact details. If sending an email, mark the email "URGENT - Eligibility query".

The MoJ may have to share your personal information with the Home Office (which is responsible for the Police Act regulations which govern enhanced checks) and other Government officials. If you do not wish this to happen, make this clear when you send your query. It may be possible for them to remove your personal information but they may be limited in how they can help. The MoJ will respond in writing, either by post or by email. A reply should be provided within 20 working days. It will state that the position is either (a) eligible, (b) not eligible or (c) may be eligible for the type of check that is being requested. In all cases they will provide reasons why. The MoJ is only able to give a *general* indication, based on the information you provide. Please note that this is **not legal advice**.

The MoJ is unable to impose sanctions on an organisation as there is no offence committed in the initial asking of the questions. However, if the MoJ's view is that the position may not be eligible, you can then present this information to the organisation.

General advice from others

You may also want to seek advice elsewhere, such as from the DBS, Unlock or Nacro. See Annex C: *Useful organisations, links and resources.*

Next steps

- **If it is not eligible:** Send any evidence to the organisation and ask them to reconsider.
    - **If the employer agrees**, and you decide to give your consent, read Section 5: *Completing a criminal record check application* for more information. If you disagree with the new level of check being proposed, repeat Note 2.
    - **If the employer disagrees**, go to Section 4: *Ineligible checks*.

- **If it is eligible:** You need to decide whether to give your consent to the check. You are not legally obliged to give your consent but if you refuse the employer will normally reject your application for the job. If you decide to give your consent, read Section 5: *Completing a criminal record check application* more information.
- **If it may be eligible:** Either return to Note 2 (to clarify the role further before challenging the organisation and seeking official clarification again) **or** go to Section 4: *Ineligible checks*.

Section 4 - Ineligible checks

About this section

You should use the *Establishing Eligibility Process* in the previous section before making use of this section.

This section is designed to help in two specific situations:-

1. Where an employer is seeking to carry out a standard check for a position that is only entitled to a basic check, or
2. Where the employer is seeking to carry out an enhanced check for a position that is only entitled to either a standard or basic check.

Note: A basic check is allowed for *all* employment positions.

Stopping the application before you have submitted it[7]

Do not submit the application until you are clear whether the position is eligible. The DBS can provide general advice on eligibility, including helping you to use the DBS Eligibility tool. However, until the check is submitted they are limited in what they can do.

Ensure that you have made it clear in writing to the organisation that you do not think it is eligible and included reasons why. If an organisation insists on undertaking a check after you have done this they *may* be: -

- Knowingly submitting an ineligible check (an offence under the Police Act 1997).
- Breaching the first principle of the Data Protection Act 1998, both by obtaining the information and processing it.
- Breaching the third principle of the Data Protection Act 1998 because the processing is likely to be 'excessive' if the position is not covered by the ROA Exceptions Order 1975.

If the organisation insists on carrying out the check, you are not legally obliged to give your consent. However, if you refuse an employer will normally reject a job application. Consider agreeing to the check, then raising a formal eligibility query with the DBS (see below).

Remember that if the position is not eligible for a standard or enhanced check, it will still be eligible for a basic check. This means that if any of your convictions are *unspent*, they will still be disclosed if the organisation decides to carry out a basic level check.

Stopping the application once you've submitted the application

If you have submitted the form but it has not yet been submitted to the DBS, you may want to contact the organisation to say that you no longer consent to the check. If the organisation is using an Umbrella Body, you may need to get their details and speak directly to them. However, if you do this, an employer will normally reject your job application.

If the application has already been submitted to the DBS, you should use their *Eligibility Query* process, explained below.

[7] 'Submitted' means you have given your consent for a disclosure to be done (by signing the declaration section of the DBS form) and handing this back to the organisation

The 'Eligibility Query' process

If you have not applied for a DBS check

The following process is designed for use when applications have already been submitted to the DBS. If no application has been submitted, the DBS is limited in what they can do. However, they are keen to monitor the eligibility of applications submitted to them in general. Therefore you can still use this process to provide information or raise particular concerns with the DBS without applying for a position or submitting a DBS application.

If you have applied for a DBS check

If you have completed a DBS application and you don't think the type of check is correct, you can contact the DBS on 0870 90 90 811 for general advice. The DBS also has a formal process that you can use to query the eligibility of the check 'mid application'. To use it, the organisation must have submitted the application form to the DBS.

You will need to be able to provide enough information to enable the DBS to locate the application. You will be asked whether you give your permission for the DBS to contact the organisation to determine eligibility. If you give your permission, the DBS will be able to raise your specific case. While the DBS may be able to contact the employer without revealing your personal details, they may not be able to give you a definitive answer to your query.

Please note that, as applications are progressing quicker than ever before, the DBS cannot guarantee to halt the application before it is issued as it may have reached the certificate printing stage.

What you need to do

To formally query the eligibility of a check submitted to the DBS, follow these steps:-

1. Email customerservices@dbs.gsi.gov.uk **as soon as possible** after submitting to the form,
2. In the subject line of the email, enter "APPLICATION ELIGIBILITY QUERY – URGENT"
3. In the email, you should include:
   a) your full name
   b) your current address
   c) your date of birth
   d) the position applied for (X-61 of the application form)
   e) organisation name (X-62 on the application form)
   f) Registered Body number (Y-69 on the application form)
   g) the DBS form reference (11 digits on the top right of the front page)
   h) details of why you think the application is not eligible.

What the DBS will do

Once these details are received, the DBS will place the application on hold. They will contact the Registered Body (RB) to gain more information. The RB will not be informed that it is the applicant that has queried the eligibility of the position. If the application has not yet reached the printing stage, the DBS will: -

1. Contact you to establish your details and get your consent to contact the RB.
2. Contact the RB (normally by letter) to establish eligibility
3. If eligibility remains in doubt after first contact, correspond with the RB and liaise with DBS policy officials when assessing the organisation's responses

Next steps

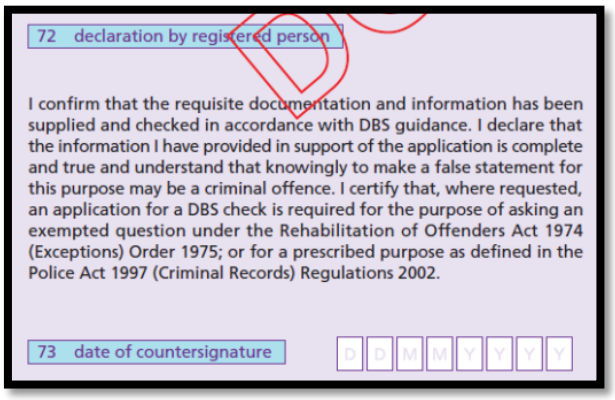
- **If it is not eligible:** The application will be stopped. The application fee will **not** be refunded by the DBS (although you may be able to claim this back from the organisation that required the check).

- **If it is eligible:** The application will continue. The DBS will contact you to inform you of this. You will have the chance to decide whether to withdraw your application or allow it to still be processed.

Taking further action

If the DBS stops the application (or even if they don't), you may decide to take further action. If an organisation submits an application for a position that they know is not eligible, they may have committed a criminal offence, as per the following: -

- Section 123 of the Police Act 1997 states: *"a person commits an offence if he knowingly makes a false statement for the purpose of obtaining, or enabling another person to obtain, a certificate under this Part."*
- The DBS Code of Practice sets out employers' obligations in respect of the use of information obtained through standard and enhanced check. A failure to comply with these provisions and performing ineligible checks beyond the scope of the Exceptions Order could lead to a breach of the Data Protection Act 1998.
- The DBS Code of Practice requires that Registered Bodies must: *"use all reasonable endeavours to ensure that they only submit Disclosure applications in accordance with the Disclosure eligibility criteria for relevant positions or employment"*
- A signed declaration has been made by a registered person (see excerpt from DBS application form).


72 declaration by registered person

I confirm that the requisite documentation and information has been supplied and checked in accordance with DBS guidance. I declare that the information I have provided in support of the application is complete and true and understand that knowingly to make a false statement for this purpose may be a criminal offence. I certify that, where requested, an application for a DBS check is required for the purpose of asking an exempted question under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975; or for a prescribed purpose as defined in the Police Act 1997 (Criminal Records) Regulations 2002.

73 date of countersignature D D M M Y Y Y Y

Via the DBS

The DBS would first seek to stop the problem happening again by educating the organisation. If that was unsuccessful, the DBS would consider suspension. If the organisation persistently and knowingly submitted ineligible applications then they would be deregistered. However, this action is incredibly rare. Since 2006, when the Conditions of Registration were introduced, only one Registered Body has been suspended for submitting ineligible applications and this registration has since been reinstated.

If you believe that the DBS has failed you in some way, you may want to take the matter further by making a complaint. See the DBS website for more details.

Via the ICO

The ICO expect the DBS to have preventative measures in place to prevent unauthorised checks. This is because they are defined as a 'data controller' under the Data Protection Act 1998.

If you believe that an ineligible check has been made by an organisation for your information you can call the Information Commissioners Helpline on 0303 123 1113 to discuss your complaint.

The ICO can only act once the organisation has obtained the information (as per Section 55 of the Data Protection Act). You can access their complaints handling web page which explains how they can help and what supporting evidence you will need to begin a complaint. The ICO *normally* requires you (the complainant) to have some form of written evidence.

If you make a complaint, the ICO will decide whether the organisation has complied with the relevant legislation. The organisation will be informed of their decision, where they need to improve and how they need to rectify the situation with you. If an organisation does not show progress after number of complaints on the same issue, the ICO's enforcement team will take over and decide on further action.

For a more detailed explanation of what action the ICO is able to take please visit their website.

Via the Ministry of Justice

Despite having policy responsibility for the ROA and its exceptions, the Ministry of Justice does not have a casework or investigative function. They cannot offer legal advice or investigate breaches of the ROA.

Via the Police

If you suspect that somebody has committed an offence under section 123(1) of the Police Act 1997 (see above), you can report it to the police. However, don't be surprised if the police don't make your case a priority. Despite the number of potential breaches, no Registered Body has yet been prosecuted under this section.

Section 5 - Completing a criminal record check application

About this section

This section explains what happens when you consent to a DBS check.

Disclosing your criminal record

The rest of this section focuses on the technical aspects of completing an application.

However, with a criminal record, there is also a lot to think about in terms of how you disclose this to the organisation in question. Unlock has published a detailed guide on disclosing to employers – visit the Information Hub part of the Unlock website, www.unlock.org.uk.

Basic applications

The DBS does not currently offer a basic criminal record check (which reveal only unspent convictions). You can find out whether your convictions are unspent by visiting www.disclosurecalculator.org.uk. For more information about basic checks, see earlier in this guide.

Standard or enhanced applications

Who processes the check?

The DBS acts as the 'middle-man' between the Registered Body (which checks eligibility and identity) and the Police (who provide the criminal record information for the certificate).

The Registered Body submits the application to the DBS. Many employers are not registered, and have to use another company called an 'Umbrella Body'. However, some large employers are Registered Bodies themselves and can submit applications directly to the DBS.

Registered Bodies and Umbrella Bodies are legally responsible for the process of submitting the application. This includes identification and address verification and declaring that the position is eligible for the check.

Completing the form

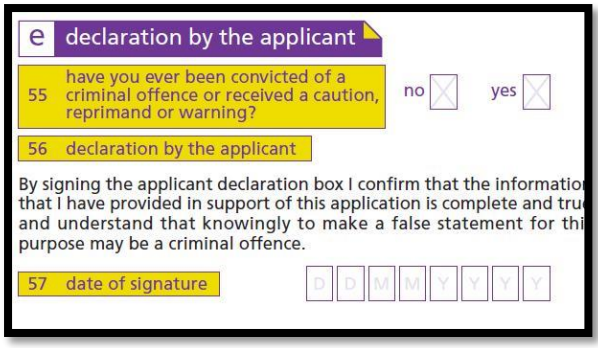
Official guidance

The DBS produce a step-by-step guide on filling out the application form. This is available to download from the DBS website.

Providing accurate information

The application form is used to help the DBS and the Police to find your records. This is known as 'PNC matching'. If you do not provide accurate information, you could be confused with somebody with a different criminal record. It is an offence to intentionally provide inaccurate details.

The question about convictions


e declaration by the applicant

55 have you ever been convicted of a criminal offence or received a caution, reprimand or warning? no yes

56 declaration by the applicant

By signing the applicant declaration box I confirm that the information that I have provided in support of this application is complete and tru and understand that knowingly to make a false statement for thi purpose may be a criminal offence.

57 date of signature D D M M Y Y Y Y

Question e-55 (see above) helps to identify your record on the Police National Computer (PNC). The declaration underneath the question means that you need to answer this question truthfully.

The question on the form is due to be amended in late 2013, to reflect the introduction of the filtering process (explained earlier in this guide). In the meantime, the DBS has issued guidance which advises applicants to interpret the question as follows:

"Do you have any convictions, cautions, reprimands or final warnings which would not be filtered in line with current guidance?"

If you are not sure how to answer this question, you can apply for a Police Subject

Access request to see what is on your record. If you do not have time to complete an SAR, and you think the answer is "Yes", you should tick "Yes". If no record can be found, you will not be asked for more information.

If you have applied to have a repealed offence (something that is no longer a crime) removed from the PNC and received confirmation from the police, you do not need to include it. A repealed offence that has been removed from the PNC will not appear on a DBS certificate.

Checking the status of your application

You can check the status of your application online. You will need your DBS application form reference and your date of birth. If you cannot remember your form reference number, you should contact the DBS.

Section 6 – How employers should handle certificate information

About this section

This section will explain what employers should do when they receive information on a criminal record check. Employers can find links to useful resources in Annex C.

Using disclosed information to make a recruitment decision

What is the DBS code of practice?

The DBS code of practice is published under Section 122 of the Police Act 1997. It aims to ensure that criminal record information is used fairly and applicants are protected from unfair discrimination due to non-relevant convictions. Anybody who receives standard or enhanced certificate information must abide by the code of practice, this includes Registered Bodies, Umbrella Bodies, recruiters and any others receiving the information.

What does the code of practice require of Registered Bodies?

The DBS code of practice requires that Registered Bodies must: -

1. Have a written policy on the secure handling of information which, in the case of Umbrella Bodies, should be made available to their clients. A sample policy produced by the DBS is available online
2. Store DBS certificate information securely
3. Retain DBS certificate information, its content or any representation of the same in any format for no longer than is necessary and for a maximum of six months following the recruitment decision unless a dispute is raised or, in exceptional circumstances, where DBS agreement is secured
4. Ensure that no reproductions of the DBS certificate or its content are made, including photocopies or scanned images, unless with the prior agreement of the DBS or as a result of a stipulated requirement relating to the e-channel service
5. Only share DBS certificate information with relevant persons in the course of their specific duties relevant to recruitment and vetting processes
6. Dispose of DBS certificate information in a secure manner
7. Ensure that they comply with DBS guidance on the portability of DBS certificates and their contents.

What does the code of practice require of others?

In making use of DBS checks, any organisation subject to the code of practice must: -

1. Ensure that all applicants for relevant positions or employment are notified in advance of the requirement for a DBS check
2. Notify all potential applicants of the potential effect of a criminal record history on the recruitment and selection process and any recruitment decision
3. Discuss the content of the DBS certificate with the applicant before withdrawing any offer of employment
4. Provide a copy of the DBS code of practice to the applicant upon request.

Written policies on people with a criminal record

DBS guidance states that organisations using criminal record checks should not have a complete ban on people with criminal records. The DBS requires organisations which use checks to have a *policy on the recruitment of ex-offenders.* Organisations are expected to only use the information on a DBS certificate in the context of such a policy.

Many organisations achieve this by simply using the example policy provided by the DBS. However, some have positive and detailed policies towards people with criminal records. To find out more about how an organisation may use the information disclosed, ask to see a copy of their policy. If you do this before apply, you may want to do this anonymously.

You may find the organisation uses vague language such as "We judge each case on its merits". To get a clearer picture about how they will treat you, try to ask them some specific questions about your particular type of convictions and/or the particular areas of the company that interest you.

Handling and storing disclosed information

Information on a certificate

Organisations that wish to use a standard or enhanced check must comply with the DBS code of practice The code seeks to ensure that sensitive personal information is handled and stored appropriately and is kept for only as long as necessary. In particular, it is an offence for Registered Bodies to: -

1. Disclose information contained within a certificate to any person who is not a member, officer or employee of the Registered Body or, in the case of Umbrella Bodies, their client unless a relevant legal exception applies;
2. Disclose information to any member, officer or employee where it is not related to that employee's duties;
3. Knowingly make a false statement for the purpose of obtaining, or enabling another person to obtain a certificate.

Persons guilty of such offences are liable to deregistration, a fine or imprisonment unless a relevant exception applies as outlined in DBS Guidance.

Self-disclosure

The DBS does not impose any rules on how organisations should handle information that you choose to disclose yourself.

However, all organisations have to follow the Data Protection Act 1998. As criminal record data is regarded as *sensitive personal data* under this legislation, they should have processes in place to ensure it is kept safe.

If you are worried about how an organisation will retain the information that you disclose, you should ask them for a copy of their data protection policy.

Section 7 – Annexes

Annex A: 'Establishing eligibility' form

In seeking to challenge an employer who believes a position is eligible for a check, you will need to obtain as much information about the role as possible. Below you will find a template which may assist you in clarifying what type of check the position you are applying for is entitled to carry out.

This form is designed to be used *before* an application has been signed and submitted.

Please note: When seeking answers to those questions that are not already available in writing, try to get some evidence in writing. This may be useful later down the line.

Question	Guidance/possible answers	Answer
About the organisation		
Name of the organisation seeking a DBS check		
Person responsible at the organisation responsible for DBS checks	*This should be the most appropriate person at the organisation who deals with criminal record checks and vetting.*	N: A: T: E:
Is the organisation a Registered Body?	*Yes/No*	
If not, which Umbrella Body do they use?	*Include organisations name, address, telephone number and email address*	N: A: T: E:
About the specific position		
Title of the role	*Use the title the organisation is using in the vacancy or on the DBS form*	
What type of check does the organisation believe the position is entitled to	*Basic, standard or enhanced*	
What is the organisation stating as being what the role involves doing?	*Refer to official statements regarding the remit of the role. If you disagree with any of this, detail this here*	

What is the organisation stating as being the main duties involved in the role?	*Refer to official statements regarding the remit of the role. If you disagree with any of this, detail this here*	
What is the organisation stating as being who the role involves working with?	*Refer to official statements regarding who the role involves working with. If you disagree with any of this, detail this here*	
On what basis does the organisation consider the role to be eligible for a check?	*Refer to eligibility table in guide and specific legislative references.*	
Does the organisation considered the role to fall within the definition of 'regulated activity'?	*Yes/No/NA*	
If yes, what is it about the role that makes them believe it is 'regulated activity'?		
How often does the role involve working with children?	*Number of hours/days per week/per month*	
How often does the role involve working with vulnerable groups?		
Does the role involve working in a specific place? If so, where?		
What supporting evidence does the organisation have to support their belief regarding eligibility?	*This may be information or arguments they have provided you with that explains why they are doing the check*	
What type of check do you believe the position is entitled to?	*Basic, standard or enhanced*	
What are your arguments for why this is the case?		
What supporting evidence do you have in support of your belief?		

About the specific check		
Have you been asked to give your consent for a check?	*Yes/No*	
If yes, have you given your consent yet?	*Yes/No/NA*	
If yes, has it been submitted?	*Yes/No/NA*	
If yes, has it been completed and returned?	*Yes/No/NA*	
Complete if/when submitted		
Your full name		
Current address		
Date of birth		
Position applied for		
Organisation name		
Registered Body number		
Form reference number		

Annex B: Template letter to employer regarding eligibility

The template letter below relates to Note 4 of the Establishing Eligibility Process.

[Your name]
[Address]
[Address]
[Address]

[Contact number]
[Email address]

[Name of relevant person]
[Company name]
[Address]
[Address]
[Address]

Re: Eligibility to undertake criminal record check when recruiting for [Insert position/unique reference]

Dear [Mr/Mrs/Miss/Ms/Other] [Insert surname],

I am writing to you with regards to the above vacancy position within your organisation.

I understand [from making an enquiry/from the application form/from the details in the vacancy] that the position is subject to a [standard/enhanced] check.

However, I don't believe that the position is entitled to this level of check. [Insert reasons why you don't think it is eligible]. My concern is that, as an employer, it is unlawful for you to knowingly submit a criminal record check application for a position which isn't eligible for one.

I have used the DBS's Eligibility Tool and, based on what I understand about the duties involved in carrying out the role, the position is entitled to a [basic/standard] check, which I would be more than happy to carry out. As a result, I would ask that you reconsider undertaking this level of check.

I have also [insert details of other steps taken that you have taken that support your challenge].

I would be grateful if you could provide me with a response in writing, letting me know of your decision and your reasons why.

Yours sincerely,

[Your hand-written signature]

[Your printed name]

Annex C: Useful organisations, links and resources

Useful organisations

Organisation	How they can help
Disclosure and Barring Service (DBS) W: www.gov.uk/dbs E: customerservices@dbs.gsi.gov.uk For enquiries about DBS: Call 0870 90 90 811 Write to PO Box 110, Liverpool, L69 3EF For referrals and safeguarding: Call 01325 953 795 Write to PO Box 181, Darlington, DL1 9FA	The primary role of the Disclosure and Barring Service (DBS) is to help employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups including children. The DBS was established under the Protection of Freedoms Act 2012 and merges the functions previously carried out by the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).
Home Office Safeguarding and Public Protection Unit A: Home Office, 4th Floor Fry Building, 2 Marsham Street, London, SW1P 4DF T: 020 7035 3246 E: HOSPPUEnquiries@homeoffice.gsi.gov.uk	The Disclosure and Barring Service is run as an executive non-departmental government body of the Home Office.
Ministry of Justice ROA Policy Unit A: ROA Policy Advisor, Sentencing Policy and Penalties Unit, Ministry of Justice, 102 Petty France, London, SW1H 9AJ T: 020 3334 3555 (main number) E: roa@justice.gsi.gov.uk	The Ministry of Justice are responsible for the Rehabilitation of Offenders Act 1974 and its exceptions.
Unlock Helpline A: 35a High Street, Snodland, Kent, ME6 5AG T: 01634 247350 and press 1 E: advice@unlock.org.uk W: www.unlock.org.uk	Confidential advice on overcoming the effects of criminal convictions.
Nacro – Resettlement Advice Service A: Park Place, 10-12 Lawn Lane, London, SW8 1UD T: 020 7840 6464 E: helpline@nacro.org.uk W: www.nacro.org.uk	Advice to serving prisoners, former prisoners and others facing severe barriers in various aspects of their lives a result of their former offending. Able to provide detailed support to individuals finding out whether their criminal record is spent.
Information Commissioners Office A: Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF T: 0303 123 1113 or 01625 545746 E: casework@ico.org.uk W: www.ico.org.uk	The UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

Useful links resources[8]

About the DBS

- Disclosure and Barring Changes (Home Office)
- Online tracking service (DBS)
- Umbrella Body database (Home Office)
- DBS Update Service (DBS)
- DBS Filtering Process (Unlock)
- DBS filtering guidance (DBS)
- Filtering rules for criminal record check certificates (DBS)
- DBS list of offences that will never be filtered from a criminal record check (DBS)

Eligibility for criminal record checks

- Eligible Positions Guidance (DBS)
- Regulated activity (Unlock)
- Regulated activity relating to children (Department for Education)
- Regulated activity relating to vulnerable (Department of Health)

Barring

- Factsheet 5: 'Relevant offences' (DBS)
- Factsheet 2: The Referral and Barring Decision Making Process (DBS)
- Barring – An Overview (Unlock)
- Barring – Representations, reviews and appeals (Unlock)

Disclosing convictions to employers

- Disclosing to employers (Unlock – Information Hub)
- www.disclosurecalculator.org.uk
- Telling an employer about criminal records (BITC)
- Applying for work (with a criminal record) (Nacro)

Rehabilitation of Offenders Act 1974

- The Rehabilitation of Offenders Act 1974 (Unlock)
- www.disclosurecalculator.org.uk (Unlock)
- Rehabilitation of Offenders (Ministry of Justice)
- The Rehabilitation of Offenders Act 1974 (Nacro)

Dealing with employment disputes

- Convictions and Employment Law (Unlock – Information Hub)

[8] Links are correct as of publication date, and are subject to change.

Annex D: Glossary

Below you will find a list of terms and what they mean when referred to in this guide.

Term	*Meaning*
Approved information	An enhanced certificate may contain 'approved information'. This is local police information provided by the police from their local records. The Chief Police Officer in each force will decide what, if any, information to provide. The DBS will print this information on both the Registered body's copy and the copy that is sent to you.
Basic check	Currently only issued by Disclosure Scotland (or Access NI), this produces a certificate that details unspent criminal conviction information.
Caution	This refers to a simple caution issued by the Police for minor offences where the individual admits guilt. Cautions for people aged 17 and under are called reprimands and final warnings.
Certificate	Or 'criminal record certificate'. Used to refer to the 'product' which is produced as a result of an application for either a basic, standard or enhanced check.
Check (basic, standard or enhanced)	Or 'criminal record check'. Used to refer to the process of applying for a criminal record certificate, whether it be a basic, standard or enhanced one.
Children	The Criminal Justice Court Service Act (CJCSA) defines a child as someone who is under 18 (under 16 if the child is employed). Also as defined in s.60 of the Safeguarding Vulnerable Groups Act 2006.
Conviction	This is where you have been found guilty by a court. You may not necessarily have attended the court in person, but you should have received paperwork from the court providing details of the offence.
CRB	The Criminal Records Bureau. In December 2012, the CRB was merged with the ISA to become the Disclosure & Barring Service (DBS)
Criminal record	This term is used to refer to convictions, cautions, warnings and reprimands which are held on the Police National Computer (PNC). If not held on the PNC, it may be recorded on local police records.
Disclosure	The process of telling somebody about your criminal record.
DBS	The Disclosure & Barring Service was launched in December 2012 after the CRB and the ISA were merged.
Disclosure Scotland	This is the equivalent of the Disclosure and Barring Service but for Scotland.
Dismissal	Being fired from a job
Disposal	An outcome of a case that wasn't a sentence at court. This includes cautions, reprimands and final warnings.
Employer	Used as a term to refer to employers, volunteer organisations and professional bodies.
Enforced subject access	Under current legislation, you can exercise your right to apply for access to information held on you (including criminal record information) under the 'subject access' provisions of the Data Protection Act 1998. Currently, some employers seek to obtain this information about employees and potential employees by compelling them to exercise their rights under the Data Protection Act. This process is known as 'Enforced Subject Access' and is undesirable because details of all convictions are revealed. Most employers are not entitled to ask for this information under the Rehabilitation of Offenders Act (ROA) 1974.

Enhanced check	For a position to be eligible for an enhanced check, it must be contained within the ROA Exceptions Order as well as also being a position which is listed in regulations made under the Police Act 1997.
Enhanced certificate	An enhanced certificate reveals all that a standard certificate does, with the additional ability to disclose relevant local police information and information from other agencies, as well as information as to whether the person is included in a list of people barred from working in regulated activity in relation to children and / or adults (if eligible and requested for the position).
Excepted position	These are positions of trust and responsibility set out in the Exceptions Order 1975, where an employer is entitled to ask a candidate to reveal details of all convictions, whether spent or not.
Exceptions Order	This is referring to the Rehabilitation of Offenders (Exceptions) Order 1975. The Order sets out those professions, occupations and positions exempt from the provisions of the ROA. These are generally positions of trust, where there is a valid need to see a person's full criminal history in order to assess their suitability for a position. Positions that fit within this criteria are entitled to ask an exempted question, and will be able to undertake *at least* a standard check.
Exempted question	An exempted question is a valid request for a person to reveal their full criminal history (including spent convictions) and is possible in those positions which are contained in the Exceptions Order.
Final warning	A final warning is a formal procedure similar to a caution, but for people aged 17 and under. It is not a sentence, nor it is a criminal conviction, but does involve an admission of guilt. It is given as a second formal warning (the first being a reprimand).
ISA	The Independent Safeguarding Authority. In December 2012, the ISA was merged with the CRB to become the Disclosure & Barring Service (DBS)
Local Police Records	Information held on local police systems but not held on the PNC.
Mitigating circumstances	Reasons that might help to explain why you committed the offences that led to you getting a criminal record.
Police Act 1997	The piece of legislation that brought about the DBS; Part V of which refers specifically to the process.
Police National Computer (PNC)	A national police system that contains information about criminal records i.e. convictions, cautions, reprimands, and warnings. The data held on PNC records is owned by individual police forces
Registered body	Organisations that have registered directly with the DBS to use its services. Each Registered body has at least one Countersignatory.
Regulated activity	The definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006. Any position which is regarded as 'regulated activity' is entitled to conduct an enhanced check which includes a check of the DBS barred lists as appropriate for the position.
Rehabilitation of Offenders Act 1974	The Rehabilitation of Offenders Act 1974 (referred to as 'ROA') enables some criminal convictions to become 'spent' (or ignored) after a 'rehabilitation period'. However, positions that carry out standard or enhanced check applications are exempt from this Act, which allows them to ask for ALL convictions, regardless of whether they are spent.
Rehabilitation period	This is a set length of time, currently from the date of conviction. After this period, with certain exceptions, you are not normally obliged to mention the conviction, for example when applying for a job or obtaining insurance.

Reprimand	A reprimand is a formal procedure similar to a caution, but for people aged 17 an under. It is not a sentence, nor it is a criminal conviction, but does involve an admission of guilt.
Sentence	A punishment given by a court.
Spent conviction	Once a rehabilitation period has expired and no further offending has taken place, a conviction is considered to be 'spent'. Once a conviction has been spent, you do not have to reveal it or admit its existence in most circumstances, including when applying for a job (unless it is an excepted position).
Standard check	A standard check reveals all convictions, cautions, reprimands and final warnings that are held on the Police National Computer, regardless of whether they are spent or not. Positions that are exempt from the ROA are eligible for a standard check. These positions are defined in the ROA Exceptions Order, which lists occupations, professions and positions considered to be exempt from the ROA.
Subject access	Under current legislation, you can exercise your right to apply for access to information held on you including criminal record information under the 'subject access' provisions of Section 7 of the Data Protection Act 1998.
Umbrella Body	A Registered body that provides access to the DBS to other non-registered organisations.
Unspent conviction	A conviction is described as unspent if the rehabilitation period associated with it has not yet lapsed. A rehabilitation period is a set length of time from the date of conviction, according to the sentence imposed.
Vulnerable adult	The definition of ‘vulnerable adult’ is contained in section 60 of the Safeguarding Vulnerable Groups Act 2006.