

THIS GUIDANCE APPLIES FROM 10 MARCH 2014

Guidance on the Rehabilitation of Offenders Act 1974

Contents:

(1) INTRODUCTION:

- **What is the Rehabilitation of Offenders Act 1974?**
- **Who benefits from the 1974 Act and how?**
- **Which parts of the UK does the 1974 Act apply to?**
- **Does the Act apply to Service personnel?**
- **Does the 1974 Act cover cautions, penalty notices for disorder or fixed penalty notices?**

(2) REHABILITATION PERIODS:

- **How long will it take before my caution or conviction becomes spent?**
- **Are there any sentences which are not covered by the 1974 Act?**
- **What are the rehabilitation periods for motoring offences?**
- **What happens if I get another caution or conviction before my first conviction becomes spent?**
- **What happens if I get another conditional caution or conviction before my first conditional caution becomes spent?**
- **I have been sentenced for more than one offence at the same time. Will the rehabilitation periods run concurrently or consecutively?**

(3) EXCEPTIONS ORDER:

- **Are there any occupations for which I will have to disclose both spent and unspent cautions and convictions?**
- **What occupations are listed on the Exceptions Order?**
- **Are there circumstances under which I do not have to disclose convictions under the Exceptions Order?**
- **What does 'filtering' mean?**
- **What information can be filtered from a Disclosure and Barring Service criminal record certificate?**
- **When can an employer ask an individual to declare details of all unprotected convictions and cautions?**
- **What are the differences between basic, standard and enhanced disclosure?**
- **How can I check whether my employer is eligible to ask for a standard or enhanced criminal records certificate from the Disclosure and Barring Service (formally known as a CRB check)?**
- **I am self-employed, how do I apply for a standard or an enhanced criminal record certificate from the Disclosure and Barring Service?**
- **Will my conviction be removed from my criminal record once it is spent? Will caution and conviction information be removed from my criminal record after a certain period of time?**

(4) INFORMATION FOR EMPLOYERS

- **How do I know if I am eligible to request a standard or enhanced criminal records certificate from prospective and/or current employees?**
- **What should I consider when employing ex-offenders?**

(5) Jurisdiction

- **Application of different rehabilitation periods and exceptions in England & Wales and Scotland**

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

- **What legislation to apply when the Disclosure and Barring Service and Disclosure Scotland issue criminal record certificates**

(6) ADDITIONAL INFORMATION

Immigration and Nationality decisions.

- **Does the 1974 Act apply to Immigration and Nationality decisions?**

Visa Applications

- **Do I have to disclose all my convictions for a visa application?**

Criminal Injuries Compensation Scheme (CICS):

- **I have an unspent conviction. Does this affect my eligibility for claiming compensation from the Criminal Injuries Compensation Scheme?**

Notification and Disclosure Schemes

- **Is the 1974 Act linked to the Violent and Sex Offenders Register?**

ANNEX A: Examples of the types of occupations, posts and activities in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

(1) INTRODUCTION:

This document should be considered a guide to the position in England and Wales only. You will find links to more detailed guidance on specific issues throughout, including references to guidance produced by the Disclosure and Barring Service (formerly the Criminal Records Bureau (CRB)) about eligibility for standard and enhanced criminal records certificates.

- **What is the Rehabilitation of Offenders Act 1974?**

The Rehabilitation of Offenders Act 1974 ("1974 Act") primarily exists to support the rehabilitation into employment of reformed offenders who have stayed on the right side of the law.

Under the 1974 Act, following a specified period of time which varies according to the disposal administered or sentence passed, cautions and convictions (except those resulting in prison sentences of over four years and all public protection sentences*) may become spent. As a result the offender is regarded as rehabilitated.

For most purposes the 1974 Act treats a rehabilitated person as if he or she had never committed, or been charged with charged or prosecuted for or convicted of or sentenced for the offence and, as such, they are not required to declare their spent caution(s) or conviction(s), for example, when applying for most jobs or insurance, some educational courses and housing applications.

*A public protection sentence, the provisions for which are set out in Part 12 of the Criminal Justice Act 2003 and Part 8 of the Armed Forces Act 2006, means a sentence of imprisonment or detention imposed for specified sexual and violent offences. These sentences include imprisonment or detention for public protection, extended sentences of imprisonment or detention for public protection, and extended determinate sentences.

- **Who benefits from the 1974 Act and how?**

All cautions and convictions may eventually become spent, with the exception of prison sentences, or sentences of detention for young offenders, of over four years and all public protection sentences regardless of the length of sentence.

Once a caution or conviction has become spent under the 1974 Act, a person does not have to reveal it or admit its existence in most circumstances. Unless an exception applies (see below), then spent cautions and convictions need not be disclosed when filling in a form, or at a job interview. An employer cannot refuse to employ someone (or dismiss someone) because he or she has a spent caution or conviction unless an exception applies.

The exceptions where you may have to declare spent cautions and convictions are listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see **Section 3** of this guidance). An employer should be able to say if an exception applies and, if so, where it can be found on the Exceptions Order.

- **Which parts of the UK does the 1974 Act apply to?**

The 1974 Act applies in England, Wales and Scotland. However there are some differences in the way in which it, and related legislation, operates in Scotland. This document should therefore be considered a guide to England and Wales only.

For information on the 1974 Act in Scotland, please visit: www.scotland.gov.uk/Topics/Justice/public-safety/offender-management/publications/law/RehabofOffenders

The relevant Northern Irish legislation, the Rehabilitation of Offenders (Northern Ireland) Order 1978 and the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 can be found here: www.dojni.gov.uk/index/accessni/legal-issues/legislation.htm

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

- **Does the Act apply to Service personnel?**

The Act applies to everyone convicted of a criminal offence or a service disciplinary offence (for example absence without leave) by either a civilian court (in the cases of criminal offences) or a Service Court or the Commanding Officer (in the cases of criminal or Service disciplinary offences). The same rehabilitation periods apply to sentences which are imposed in the service justice system as are imposed by the civilian justice system (for example a fine imposed by a Magistrates' Court and a fine imposed by a Court Martial, would each have the same rehabilitation period of a year beginning with the date of conviction).

Additionally there are two sentences which attract a rehabilitation period and which can only be imposed by the service justice system;

- removal from the service (for example dismissal with disgrace from Her Majesty's service or dismissal from Her Majesty's service) which attracts a rehabilitation period of 1 year beginning with the date of conviction; and
- a sentence of service detention, the total rehabilitation period being the period of the sentence and an additional 'buffer' period of 1 year which applies from the end of the sentence (see the section below on rehabilitation periods).

These rehabilitation periods are halved if the offender was under 18 at the time of conviction.

All of the other sentences particular to the service justice system (for example a severe reprimand or a service supervision and punishment order) that are not listed elsewhere in the guidance are spent immediately.

- **Does the 1974 Act cover cautions, penalty notices for disorder or fixed penalty notices?**

The 1974 Act covers simple cautions (which become spent immediately) and conditional cautions (which become spent after three months).

Reprimands and warnings were abolished in April 2013 and a reprimand or warning given before that date is now to be treated as a youth caution which, as with adult cautions, is spent immediately.

Fixed Penalty Notices and Penalty Notices for Disorder do not constitute a conviction or caution (though they may be recorded on local police systems should the force consider it necessary to do so) and they therefore are not covered by the 1974 Act (but see below in relation to a FPN issued for certain road traffic offences and where an endorsement is imposed).

(2) REHABILITATION PERIODS:

- **How long will it take before my caution or conviction becomes spent?**

The rehabilitation period (the length of time before a caution or conviction becomes spent) is determined by the type of disposal administered or the length of the sentence imposed. Rehabilitation periods that run beyond the end of a sentence are made up of the total sentence length plus an additional period that runs from the end of the sentence, which we have called the 'buffer period'. Other rehabilitation periods start from the date of conviction or the date the penalty was imposed.

The 'buffer periods' are halved for those who are under 18 at date of conviction (save for custodial sentences of six months or less where the 'buffer period' is 18 months).

The rehabilitation periods for sentences with additional "buffer periods" which run from the end date of the sentence are shown in the table below:

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

Sentence/disposal	Buffer period for adults (18 and over at the time of conviction or the time the disposal is administered). This applies from the <u>end</u> date of the sentence (including the licence period).	Buffer period for young people (under 18 at the time of conviction or the time the disposal is administered). This applies from the <u>end</u> date of the sentence (including the licence period).
Custodial sentence* of over 4 years, or a public protection sentence	Never spent	Never spent
Custodial sentence of over 30 months (2 ½ years) and up to and including 48 months (4 years)	7 years	3½ years
Custodial sentence of over 6 months and up to and including 30 months (2 ½ years)	4 years	2 years
Custodial sentence of 6 months or less	2 years	18 months
Community order or youth rehabilitation order**	1 year	6 months

*Custodial sentence includes a sentence of imprisonment (both an immediate custodial sentence and a suspended sentence), a sentence of detention in a young offender institution, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000, a detention and training order, a sentence of youth custody, a sentence of corrective training and a sentence of Borstal training.

**In relation to any community or youth rehabilitation order which has no specified end date, the rehabilitation period is 2 years from the date of conviction.

The following table sets out the rehabilitation period for sentences which do not have “buffer periods” and for which the rehabilitation period runs from the date of conviction:

Sentence/disposal	Rehabilitation period for adults (18 and over at the time of conviction or the time the disposal is administered).	Rehabilitation period for young people (under 18 at the time of conviction or the time the disposal is administered).
Fine	1 year	6 months
Conditional discharge,	Period of the order	Period of the order
Absolute discharge	None	None
Conditional caution and youth conditional caution	3 months or when the caution ceases to have effect if earlier	3 months
Simple caution, youth caution	Spent immediately	Spent immediately
Compensation order*	On the discharge of the order (i.e. when it is paid in full)	On the discharge of the order (i.e. when it is paid in full)
Binding over order	Period of the order	Period of the order
Attendance centre order	Period of the order	Period of the order
Hospital order (with or without a restriction order)	Period of the order	Period of the order
Referral order	Not available for adults	Period of the order
Reparation order	Not available for adults	None

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

Examples:

A 2 year custodial sentence given to an adult may become spent after 6 years: the rehabilitation period is the period of the sentence plus a further 'buffer period' of 4 years, giving a total of 6 years.

A 2 year custodial sentence suspended for 2 years is spent after 6 years; the rehabilitation period is the period of the custodial sentence plus a further buffer period of 4 years giving a total of 6 years. (A suspended sentence is a sentence of imprisonment and the rehabilitation period is therefore determined by the custodial sentence, regardless of the period for which it is suspended).

A 6 month sentence of detention given to a young person may become spent after 2 years: the rehabilitation period is the period of the sentence plus a further 'buffer period' of 18 months, giving a total of 2 years.

A 1 year community order given to an adult may become spent after 2 years: the rehabilitation period is the length of the order plus a further 'buffer period' of 1 year, giving a total of 2 years.

A 1 year youth rehabilitation order given to a young person may become spent after 18 months: the rehabilitation period is the length of the order plus a further 'buffer period' of 6 months, giving a total of 18 months.

An adult who is given a fine will have to declare this conviction for 1 year from the date of conviction before it is considered spent.

***Compensation Orders** – it is important that individuals obtain proof of payment from the court and keep this document to prove that the compensation order has been paid in full.

- **Are there any sentences which are not covered by the 1974 Act?**

The following sentences are exempt from the 1974 Act and can never become spent:

- a. Sentence of imprisonment for life;
- b. Sentence of imprisonment, youth custody, detention in a young offender institution or corrective training of over 4 years;
- c. Sentence of preventive detention;
- d. Sentence of detention during Her Majesty's pleasure or for life;
- e. Sentence of custody for life;
- f. Public protection sentences (imprisonment for public protection, detention for public protection, extended sentences of imprisonment or detention for public protection and extended determinate sentences for dangerous offenders).

- **What are the rehabilitation periods for motoring offences?**

An endorsement for a road traffic offence listed in Schedule 2 to the Road Traffic Offenders Act 1988, imposed either by the court or by means of a fixed penalty notice (FPN) is a sentence for the purposes of the 1974 Act and may become spent after 5 years (or two and half years where the offender is under 18). Road traffic legislation specifically provides for a FPN in these circumstances to be treated as a conviction and dealt with as such under the 1974 Act. Penalty points and a driving disqualification imposed by the court on conviction may become spent when they cease to have effect (penalty points have effect for three years as set out in road traffic legislation). Where the court imposes more than one sentence or penalty for the offence then the longest rehabilitation period determines when the conviction may become spent.

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

A fixed penalty notice (FPN) can be used to deal with minor road traffic offences, but it is not a criminal conviction or a caution and the 1974 Act does not apply.

Examples

An adult is convicted of a road traffic offence, and the court imposes a fine (rehabilitation period 1 year), an endorsement (rehabilitation period 5 years), penalty points (rehabilitation period 3 years) and driving disqualification for 1 year (rehabilitation period 1 year); the rehabilitation period for this conviction will be 5 years because the endorsement carries the longest rehabilitation period.

If the offender was under 18 and received the above sentence, the conviction may become spent after 3 years because the longest rehabilitation period applicable would then be three years for the penalty points (the endorsement would become spent after two and half years).

Once the conviction becomes spent, the person is not required to declare it when applying for most jobs, or (motor) insurance

It is the case for all convictions (not only road traffic convictions) that where more than one sentence or penalty is imposed then the conviction may only become spent once the longest rehabilitation period which applies has ended.

For more information on the rehabilitation periods for particular driving offences, please consult: www.direct.gov.uk/en/motoring/driverlicensing/endorsementsanddisqualifications/dg_10022425

- **What happens if I get another caution or conviction before my first conviction becomes spent?**

If you already have an unspent conviction and you get a further caution or conviction before the earlier conviction has become spent, one of the following will apply:

- a. If your later outcome is a caution (either a simple caution or a conditional caution), neither rehabilitation period will be affected. The conviction for the earlier offence will become spent at the time originally fixed, and the caution for the later offence will become spent after the normal period (immediately for a simple caution or three months for a conditional caution).
- b. If your later outcome is a conviction, then *neither* conviction will become spent until the rehabilitation periods for *both* offences are over. This applies to summary offences (offences that can only be tried in a magistrates' court) as well as either way offences (triable in either the magistrates' court or the Crown Court) and indictable only offences (offences that can only be tried in the Crown Court). Please note that there are very limited exceptions to this under section 6(5) of the 1974 Act.
- c. If your later outcome is a conviction that results in a custodial sentence of more than four years, or a public protection sentence of any length, then neither the second nor the first conviction will ever become spent.

Once a conviction becomes spent, it remains spent, even if a person is convicted of other offences later.

- **What happens if I get another conditional caution or conviction before my first conditional caution becomes spent?**

If the later conditional caution or conviction is separate to the earlier conditional caution (i.e. not for the offence in respect of which you were cautioned), then neither rehabilitation period will be affected. The conditional caution for the earlier offence will become spent at the end of 3 months from when it is given, and the caution or conviction for the later offence will become spent after the normal period.

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

For example: A person receives a conditional caution for shoplifting. A month later he receives a conviction for a separate offence. The conditional caution will become spent in the normal way (three months from the date of issue) and, in relation to the conviction for the separate offence the rehabilitation period will apply for the sentence imposed by the court

However, if you fail to comply with a conditional caution, and you are subsequently prosecuted the conditional caution will cease to have effect. Any subsequent conviction will then attract the relevant rehabilitation period for the sentence imposed by the court.

For example: A person receives a conditional caution for shoplifting. He fails to comply with the conditions and as a result is prosecuted for, and convicted of, the shoplifting offence for which he receives a fine, The conditional caution ceased to have effect when he was prosecuted and he now has a conviction with a 12 month rehabilitation period because, in this example, he was sentenced to a fine.

- **I have been sentenced for more than one offence at the same time. Will the rehabilitation periods run concurrently or consecutively?**

If you receive more than one sentence at the same time, the total rehabilitation period will depend on whether the sentences run concurrently (at the same time) or consecutively (one after the other).

If concurrent sentences are imposed, then the longest applicable rehabilitation period will apply to all the sentences.

For example, a four month and six month prison sentence ordered to run concurrently will count as a single term of six months (carrying a “buffer period” of two years from the end of the sentence, giving a total rehabilitation period of two years and 6 months before both convictions can be considered spent).

If consecutive sentences are imposed, then the sentences will be added together to calculate the rehabilitation period.

For example, a four month and six month prison sentence running consecutively will count as a ten month sentence (carrying a “buffer period” of four years from the end of the sentence, giving a total rehabilitation period of four years and ten months before the convictions can be considered spent).

(3) EXCEPTIONS ORDER

- **Are there any jobs or other activities for which I will have to disclose both spent and unspent cautions and convictions?**

Yes. There are certain exceptions where you may be asked to disclose your caution or conviction even if it is spent. These are set out in the Rehabilitation of Offenders Act (Exceptions) Order 1975 (the “Exceptions Order”) which lists exceptions to the 1974 Act in recognition that there are certain activities for which fuller disclosure of a person’s criminal record history is relevant.

Inclusions in the Exceptions Order are made following careful consideration of the risks associated with a particular job or activity. There must be compelling evidence that there exists a particular opportunity for employees or people involved within that activity to cause harm to the public, for example through the abuse of trust, or that there is a real risk to children, other people in vulnerable circumstances or some other particularly sensitive area of work.

Where an exception to 1974 Act exists and you are asked to disclose your cautions and convictions then you must list all cautions and convictions, even if they are spent, other than

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

protected cautions and convictions (see further below). Where an exception exists, the employer or licensing body will be eligible for a standard and in some cases an enhanced criminal records disclosure certificate from the Disclosure and Barring Service (“DBS”) (formerly the Criminal Records Bureau (CRB)) containing details of all your unprotected cautions and convictions.

- **What occupations are listed on the Exceptions Order?**

The positions listed in the Exceptions Order mainly relate to particularly sensitive areas such as work with children or other people in vulnerable circumstances, work in law enforcement and the legal system, and high level financial positions. Exceptions also apply to certain licences (such as a Security Industry Authority licence) and to certain proceedings.

Annex A provides a summary of the main occupations, posts and activities that are included in the Exceptions Order. It is important to be aware that the Exceptions Order is kept under review and amendments are made periodically to ensure that the criminal disclosure regime meets the changing requirements of public protection.

- **Are there circumstances under which I do not have to disclose all my cautions and convictions under the Exceptions Order?**

On 29 May 2013, amendments were made to the Exceptions Order so that certain old and minor cautions and spent convictions are 'protected' and are not subject to disclosure under the Exceptions Order, nor will they appear on a standard or enhanced disclosure certificate issued by the DBS. In addition employers will not be able to take these protected cautions and convictions into account when making decisions about any individual.

There are a small number of circumstances in which protected cautions and convictions do still need to be disclosed and can be taken into account, for example in relation to national security related positions. Further information on this is set out below.

- **What does ‘filtering’ mean?**

Filtering is the term that the DBS uses to describe the process which will identify protected convictions and cautions and ensure that they are not disclosed on DBS certificates.

- **What information can be filtered from a Disclosure and Barring Service criminal record certificate?**

The rules as to when a conviction or caution will be filtered are set out in legislation. This states that a standard or enhanced disclosure certificate must include the following:

- All cautions given for a specified list of offences– see below
- Cautions given less than 6 years ago (where the person was 18 or over at the time of caution)
- Cautions given less than 2 years ago (where the person was under 18 at the time of caution)
- All convictions for a specified list of offences - see below
- All convictions that result in a custodial sentence
- Convictions given less than 11 years ago (where the person was 18 or over at the time of conviction)
- Convictions given less than 5½ years ago (where the person was under 18 at the time of conviction)

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

- Where the person has more than one conviction then all convictions will be included on the certificate (no conviction will be filtered)
- Where a person is convicted of multiple offences, then the conviction will be included on the certificate, as each offence is treated as if it were a separate conviction

The specified list of offences includes a range of offences which are serious and which relate to sexual offending, violent offending and/or are relevant to safeguarding people in vulnerable circumstances. Cautions and convictions given for these offences will always be subject to disclosure.

The specified list of offences which will never be filtered from a criminal record certificate is available on the DBS website.

Examples:

An adult is given a community order of 1 year for an offence which is not on the specified list:

- *The conviction will become spent 1 year after the end date of the order (i.e. 2 years from conviction). This means that, unless the Exceptions Order applies, the person will not then need to disclose the conviction once it has become spent. If the Exceptions Order does apply, the person will need to disclose the conviction.*
- *The conviction will become “protected” 11 years after the date of conviction (provided it is the only conviction on the person’s record). This means that, even if the Exceptions Order applies, the person will not have to disclose the conviction after this time.*

A young person is given a youth rehabilitation order of 1 year for an offence which is not on the specified list:

- *The conviction will be spent 6 months after the end date of the order (i.e. 1 year and 6 months after conviction). This means that, unless the Exceptions Order applies, the person will not then need to disclose the conviction once it has become spent. If the Exceptions Order does apply, the person will need to disclose the conviction*
- *The conviction will become “protected” 5 ½ years after the date of conviction (provided it is the only conviction on the person’s record). This means that, even if the Exceptions Order applies, the person will not have to disclose the conviction after this time*

A person receives a simple caution as an adult for an offence which is not on the specified list:

- *The caution will be spent immediately. This means that, unless the Exceptions Order applies, the person will not need to disclose the caution. If the Exceptions Order does apply, the person will need to disclose the caution*
- *The caution will become “protected” after a period of 6 years. This means that, even if the Exceptions Order applies, the person will not have to disclose the caution after this time*

A person receives a caution, or equivalent, as a young person for an offence which is not on the specified list:

- *The caution will be spent immediately. This means that, unless the Exceptions Order applies, the person will not need to disclose the caution. If the Exceptions Order does apply, the person will need to disclose the caution*
- *The caution will become “protected” after a period of 2 years. This means that, even if the Exceptions Order applies, the person will not have to disclose the caution after this time*

Full guidance can be found on the DBS website at:

www.gov.uk/government/collections/dbs-filtering-guidance

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

- **Can an employer ask an individual to declare details of all convictions and cautions?**

The 1974 Act places limits on what convictions and cautions an employer can ask an individual about and what they can take into account. Any employer can ask a person to disclose unspent convictions and take these into account. Where the job or activity is listed in the Exceptions Order, a standard or (where the role is listed in Regulations made under the Police Act 1997) an enhanced disclosure certificate can be requested, and an employer can ask a person about any unprotected spent convictions and cautions - that means those spent convictions and cautions which are not protected and would be disclosed on a DBS certificate (under the rules described above).

If an employer takes into account a conviction or caution which they are not entitled to ask about they are acting unlawfully under the 1974 Act.

If the employer asks you whether you have any cautions and convictions and the Exceptions Order does **not** apply to the job or activity, you need only disclose those that are unspent.

If the employer asks you whether you have any cautions and convictions and the Exceptions Order **does** apply, you should disclose any cautions and convictions which are not protected (which will mean disclosing certain spent cautions and convictions as set out above).

There are a small number of defined positions where details of all convictions and cautions, including otherwise protected cautions and convictions, may be taken into account. These positions include national security and police posts, where disclosure of criminal records is not provided by the Disclosure and Barring Service.

- **What are the differences between basic, standard and enhanced disclosure?**

Basic disclosures (criminal conviction certificates) contain details of unspent convictions and conditional cautions only. They are available from Disclosure Scotland. An individual can apply for a certificate directly. Alternatively, an application can be made through an employer but only if they have formal written consent of the subject of the application.

Standard disclosures (Criminal Record Certificates) are available from the Disclosure and Barring Service and contain details of all unprotected convictions and cautions, both unspent and spent. These certificates are available for jobs and activities listed on the Exceptions Order.

Enhanced disclosures (Enhanced Criminal Record Certificates) are also available from the Disclosure and Barring Service and contain details of all unprotected convictions and cautions, both unspent and spent, and also any intelligence information which a chief officer of police reasonably believes to be relevant to the application. These certificates are only available for certain jobs and activities listed on the Exceptions Order, usually involving regular contact with children and other people in vulnerable circumstances.

The Police Act 1997, under which the Disclosure and Barring Service operates, sets out whether standard or enhanced disclosure applies. Applications for standard and enhanced criminal record certificates have to be made by the recruiting organisation either directly if they are a Registered Body or through a Registered Body providing an umbrella service (sometimes known as an Umbrella Body).

The certificate is sent to the individual who must then hand it to the employer.

For more detailed guidance about how to apply for standard and enhanced criminal record certificates and how to complete the required application forms, please visit:

www.direct.gov.uk/en/Employment/Startinganewjob/DG_195813

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

- **How can I check whether my employer is eligible to ask for a standard or enhanced criminal records certificate from the Disclosure and Barring Service (formerly known as a CRB check)?**

Your employer should be able to tell you which level of certificate you will apply for and the reasons for this. If you are unsure that the level of certificate is the correct level, the Disclosure and Barring Service has developed and implemented a process whereby an applicant, following submission of a Disclosure and Barring Service application, can contact the Disclosure and Barring Service and ask for an application to be placed on hold whilst the Disclosure and Barring Service contacts the Registered Body to ask them to confirm that the position is one which is eligible for a standard or enhanced disclosure certificate. The applicant is advised that they can, at any point during this process withdraw the application.

Details of this process can be found at:

www.direct.gov.uk/en/Employment/Startinganewjob/DG_195809

- **I am self-employed, how do I apply for a standard or an enhanced criminal record certificate from the Disclosure and Barring Service?**

If you are self-employed you are not able to apply for a standard or an enhanced criminal record check from the Disclosure and Barring Service as an individual cannot ask an exempted question of themselves. It is for the recruiting organisation asking the exempted question to assess an applicant's suitability.

However the following options are available:

- a. As a self-employed person, you can apply for a Disclosure and Barring Service disclosure certificate by registering with an agency but only if you intend to undertake work through the agency which is eligible for a DBS certificate and that the agency is making a suitability decision in relation to this;
- b. You are able to obtain a basic disclosure certificate from Disclosure Scotland. This will provide you with details of any unspent convictions. You can find the online application form for Disclosure Scotland here: www.disclosurescotland.co.uk/apply-online/;

You are also able to make a 'subject access request' to your local police force under the provisions of the Data Protection Act 1998, which will provide up-to-date details of your criminal record.

More detail, including the contact details of each constabulary, is provided on the Home Office website:

www.homeoffice.gov.uk/publications/agencies-public-bodies/CRB/about-the-crb/subject-access-police-contacts.

- **Will my conviction be removed from my criminal record once it is spent? Will caution and conviction information be removed from my criminal record after a certain period of time?**

Current police policy is to retain all caution and conviction information until the subject reaches 100 years of age, for police operational reasons and in the interest of the prevention and detection of crime.

The disclosure of information about spent convictions and cautions on a standard or enhanced disclosure certificate is justified in order to mitigate risks in the workplace, which are present for particularly sensitive purposes and positions, and to inform criminal and other tribunal proceedings. If the information is not relevant, it should not count against the individual concerned. The Disclosure and Barring Service Code of Practice requires registered bodies

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

have a fair and clear policy towards ex-offenders and not to discriminate automatically on the basis of a conviction or caution.

Chief officers of police are responsible, as data controllers, for information stored on police systems by their force and, in exceptional circumstances, may agree to remove information from an individual's record. However this is only where compelling reasons exist and it is a matter for the individual to raise directly with the chief officer of police concerned.

(4) INFORMATION FOR EMPLOYERS

- **How do I know if I am eligible to request a standard or enhanced criminal records certificate from prospective and/or current employees?**

You are only eligible to request a standard or enhanced disclosure certificate, containing information on both unprotected spent and unspent convictions, from an employee or prospective employee if that individual is engaged in an activity listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see **Section 3** above) and in the case of enhanced criminal record certificates the activity or position is also included in the Regulations made under the Police Act 1997. If you are unsure whether such a certificate can be requested, you can contact the Disclosure and Barring Service at www.gov.uk/government/organisations/disclosure-and-barring-service.

- **What should I consider when employing ex-offenders?**

Each employer is best placed to consider whether a person's convictions (either before they have become spent, or, in the case of activities listed on the Exceptions Order, when they are spent) make him or her unsuitable for a particular job. But it is important that you should reach a balanced judgement, having regard to such factors as:

- a. the person's age at the time of the offence;
- b. how long ago the offence took place;
- c. whether it was an isolated offence or part of a pattern of offending;
- d. the nature of the offence;
- e. its relevance to the post or position in question; and
- f. what else is known about the person's conduct before and since the offence.

The Disclosure and Barring Service Code of Practice requires registered employers to have a fair and clear policy towards ex-offenders and not to discriminate automatically on the basis of an unprotected conviction or caution.

More information for employers about recruiting ex-offenders is provided on Business Link: www.businesslink.gov.uk/bdotg/action/layer?r.i=1097472733&r.l1=1073858787&r.l2=1084822723&r.l3=1097470700&r.s=sc&r.t=RESOURCES&topicId=1097470700

(5) Jurisdiction

- **Application of different rehabilitation periods in England & Wales and Scotland**

Rehabilitation periods should be determined with reference to the law of the jurisdiction to which the inquiry relates, for example, where the position or job is located.

- **What legislation will apply when the Disclosure and Barring Service and Disclosure Scotland issue criminal record certificates.**

DBS will apply the relevant legislation as it applies in England and Wales and Disclosure Scotland will apply the relevant legislation as it applies in Scotland. However, in cases where the DBS has asked Disclosure Scotland to carry out its functions in respect of England and Wales, Disclosure Scotland should apply the law relating to England and Wales.

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

This means that basic disclosure certificates issued by Disclosure Scotland for the purpose of a job or activity in England and Wales will show unspent convictions in accordance with the rehabilitation periods which apply under the law in England and Wales.

(6) ADDITIONAL INFORMATION

Immigration and Nationality decisions

- **Does the 1974 Act apply to Immigration and Nationality decisions?**

Immigration and nationality decisions are exempt from the 1974 Act. This means that both spent and unspent convictions can be considered by the UK Border Agency when making these assessments.

Visa Applications

- **Do I have to disclose all my convictions for a visa application?**

The eligibility requirements for a visa to travel to another country are a matter for the country concerned and you should contact the embassy of the relevant country if you require further advice.

Criminal Injuries Compensation Scheme 2012 (CICS)

- **I have an unspent conviction. Does this affect my eligibility for claiming compensation from the Criminal Injuries Compensation Scheme?**

The Criminal Injuries Compensation Authority may refuse or reduce a payment if you have an unspent criminal conviction. The CICS uses the same definition of 'conviction' and the same determination of whether a conviction is spent, or a sentence is excluded from rehabilitation, as the 1974 Act.

A payment will not be made if you have an unspent conviction at the date of application, or are convicted before a final decision is made, for an offence which resulted in:

- a sentence excluded from rehabilitation;
- a custodial sentence;
- a sentence of service detention
- removal from Her Majesty's Service
- a community order;
- a youth rehabilitation order; or
- a sentence equivalent to a sentence under sub-paragraphs (a) to (f) imposed under the law of Northern Ireland or a member state of the European Union, or such a sentence properly imposed in a country outside the European Union.

If on the date of your application you have an unspent conviction which resulted in a sentence not included in the list above, an award under the CICS will be withheld or reduced unless there are exceptional reasons not to do so.

This does not apply to a conviction for which the only penalty imposed was one or more of an endorsement, penalty points or a fine under Schedule 2 to the Road Traffic Offenders Act 1988.

The CICS will apply the law of England and Wales to applications from applicants with unspent convictions who have been injured in England and Wales i.e. rehabilitation periods in England and Wales will apply regardless of where the applicant committed the offence and when it was committed.

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

For more information about the CICS 2012, or previous Criminal Injuries Compensation Schemes, please visit: www.gov.uk .

Notification and Disclosure Schemes

- **Is the 1974 Act linked to the Violent and Sex Offenders Register?**

The 1974 Act is concerned with the disclosure of cautions and convictions and managing risk in the workplace. It is not the way in which the wider risks posed by ex-offenders are managed in the community.

For example, those convicted of violent or sexual offences may be subject to other requirements on release, such as the notification requirement to register with the police under the Sexual Offences Act 2003 for inclusion on the 'Violent and Sex Offenders Register'. The notification requirement periods are linked to the sentence received and they are set out in the Sexual Offences Act 2003.

In addition, the Child Sex Offender Disclosure Scheme set up in 2008 allows parents, carers and guardians to formally ask the police to tell them if someone has a record for child sexual offences.

For more information on this scheme, please consult: www.homeoffice.gov.uk/crime/child-sex-offender-disclosure/

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.

Examples of the types of occupations, posts and activities in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

Please be aware that this is **not** a comprehensive list and merely gives an indication of the general types of employment that are included in the Exceptions Order.

1. Regulated activity with children and other activities which involve working closely with children such as caring for, training, supervising or being solely in charge of children under 18 (including adoption, fostering, day care and childminding)
2. Regulated activity and other activities which involve caring for, training, supervising or being solely in charge of other people in vulnerable circumstances (including social work and advocacy services)
3. Employment in healthcare professions (including medical practitioners, dentists, nurses, midwives, optometrists, registered pharmacists and osteopaths)
4. Employment concerned with national security (including the provision of air traffic services and employment by the UK Atomic Energy Authority)
5. Employment in the legal profession (including barristers, solicitors, legal executives, the Crown Prosecution Service and judicial appointments)
6. Offices and positions in HM Courts and Tribunals Service and the Judicial Office (including Justices' and sheriff's, court and tribunal security officers and contractors with unsupervised access to court-houses, tribunal buildings, offices and other accommodation used in relation to the court or tribunal)
7. Employment in law enforcement (including police constables and cadets, the naval, military and air force police, traffic wardens and employment in the Serious Fraud Office (SFO) and the Serious Organised Crime Agency (SOCA))
8. Offices responsible for the enforcement of warrants and writs (including Court officers who execute county court warrants, High Court enforcement officers, sheriffs and Civilian enforcement officers)
9. Employment in the Prison and Probation Services (including prison and probation officers, members of boards of visitors etc.)
10. Employment in the financial sector (including chartered and certified accountants, actuaries and all positions for which the Financial Conduct Authority or the competent authority for listings are entitled to ask exempted questions to fulfil their obligations under the Financial Services and Markets Act 2000)
11. For licensing purposes (including the National Lottery, gambling, firearms and drugs licensing purposes, Security Industry Authority licences, and licensing hackney carriages or private hire vehicle drivers)

Important Note: This is intended as general guidance only. It is not legal advice and must not be regarded as a definitive interpretation of the 1974 Act. Anyone in doubt should seek their own legal advice.