

## A-Z Guide

# Criminal Record (Clean Slate) Act



## Overview

The intention of this Act is to allow individuals with convictions (who qualify for the scheme) to have those convictions concealed by the Department of Justice, and to state that they have no criminal record when asked. It is an automatic scheme and does not require individuals to apply to have their slate cleaned.

The Act came into force on 29 November 2004. In order to qualify, an individual must have:

- No convictions within the last seven years; and
- Never been sentenced to a custodial sentence (e.g. imprisonment, corrective training or borstal); and
- Never been detained in a hospital due to a mental condition instead of being sentenced; and
- Not been convicted of a specified offence (largely crimes of a sexual nature); and
- Paid in full any fines or reparational costs ordered by the court in a criminal case; and
- Never been indefinitely disqualified from driving.

This legislation entitles applicants, whose convictions are concealed, to state unequivocally that they do not have any previous convictions, even though they do. An employer asking candidates if they have any convictions will not be in breach of this Act, but will be in breach should they require the candidate to disclose, or to answer questions on, concealed convictions.



Exceptions in which candidates must reveal all convictions include when applying for:

- Positions predominantly involving the care and protection of, but not predominantly involving the delivery of education to, a child or young person (for example, a foster parent or a caregiver of children or young persons);
- Positions of national security;
- Security or law enforcement roles (e.g. police, prison officer, probation officer or security officer).

## Best Practice

It is best to avoid situations in which the candidate is unsure whether they should disclose concealed convictions. Any application form or interview question that asks candidates about any convictions should use clear and unambiguous language (such as “do you have any criminal convictions, not including any concealed under the Clean Slate Act?”). Should a candidate inadvertently reveal such information, ensure that such information is not taken into account.

See **A-Z Guide** on **Application Forms** for an example.

As the eligibility criteria for this automatic scheme is somewhat more complicated than merely the passing of seven years, it is likely some applicants will believe they qualify for the scheme when they do not and thereby answer any questions regarding convictions incorrectly believing that they are covered by the Act. Should it later be found they were not eligible, it is arguable they misrepresented themselves, albeit unintentionally. Therefore it is recommended that employers check themselves, rather than rely on the candidate’s understanding of this Act or attempt to ascertain all the information from the candidate.

## Remember

- **Always call AdviceLine to check you have the latest guide**
- **Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.**
- **Use our AdviceLine employment advisors as a sounding board to test your views.**
- **Get one of our consultants to draft an agreement template that’s tailor-made for your business.**

This guide is not comprehensive and should not be used as a substitute for professional advice.

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Published: **June 2023**

