

## **Disclosure Eligibility**

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Under the terms of the Rehabilitation of Offenders Act 1974, employers must not consider spent criminal convictions when making recruitment decisions. However, some positions are exempt from this Act. For these positions, employers are permitted to consider details regarding spent convictions through an application for a Standard or Enhanced Criminal Disclosure. For positions considered 'Regulated Activity', individuals will be eligible for an Enhanced Criminal Disclosure. For positions considered 'Controlled Activity', individuals will be eligible for a Standard Criminal Disclosure.

Below are detailed explanations regarding disclosure eligibility. BackCheck will work with employers to ensure that the correct level of disclosure is obtained, ensuring the provision of the most appropriate information required to make an informed hiring decision without compromising the candidate's privacy. Please note that employers should not request from their candidates conviction information that is not relevant to the position that they have applied. Employers are at risk of being subject to a claim for discrimination where candidates are asked to provide information on spent convictions and to undertake either a Standard or Enhanced Criminal Disclosure where the position to which they have applied is not exempted from the Rehabilitation of Offenders Act 1974.

### **What is a Regulated Activity?**

A Regulated Activity is defined as:

- Activity involving contact with children or vulnerable adults that is of a specified nature and is on a frequent, intensive and/or overnight basis. See below for definitions of specified activities and frequent and intensive.
- Activity involving contact with children or vulnerable adults in a specified place, frequently or intensively. See below for a definition of a specified place.
- Fostering and Childcare
- Certain specified positions of responsibility, as set out in the Safeguarding Vulnerable Groups Act 2006. See below for a definition of specified positions.

### **What is a Controlled Activity?**

A Controlled Activity is defined as covering the work of:

- Ancillary support workers FE, NHS and adult social care which is done frequently and gives the opportunity for contact with children and/or vulnerable adults. See below for definitions of children and vulnerable adults.
- People working frequently for specified organisations in roles which give them opportunity for access to sensitive records about children and/or vulnerable adults. See below for definition of specified organisations.

### **What is meant by Frequently, Intensively, and Overnight?**

- Frequently is currently defined as one occasion per week or more on an ongoing basis with the same group of children or vulnerable adults.
- Intensively is currently defined as on four or more occasions in any 30 day period with the same group of children or vulnerable adults.
- Overnight is defined as being between 2:00am and 6:00am.

### **Who is a child?**

A child is currently defined as a young person under the age of 18, except in employment settings where the age limit is 16.

## Who is a vulnerable adult?

A person is a vulnerable adult if they have attained the age of 18 and:

- They are in residential accommodation (*In connection with any care or nursing he requires or is or has been a pupil attending a residential special school.*),
- They are in sheltered housing,
- They receive domiciliary care (*Domiciliary care is care of any description or assistance, provided by reason of his age, health or any disability he has, whether provided continuously or not which a person receives in a place where he is, for the time being, living.*),
- They receive any form of health care (*Treatment, therapy or palliative care of any description*),
- They are detained in lawful custody (*A person is in lawful custody if he is – detained in a prison, detained in a remand centre, young offender institution or secure training centre, detained in attendance centre, or detained person who is detained in a removal centre or short-term holding facility or in pursuance of escort arrangements.*),
- They are by virtue of an order of a court under supervision by a person exercising functions for the purposes of Part 1 of the Criminal Justice and Court Services Act 2000,
- They receive a welfare service of a prescribed description (*Services which provide support, assistance, advice or counseling to individuals with particular needs – does not include community care services within the meaning of section 46 of the National Health Service and Community Care Act 1990.*),
- They receive any service or participate in any activity provided specifically for persons who has particular needs because of his age, has any form of disability, has a physical or mental problem of such description as is prescribed, she is an expectant or nursing mother in receipt of residential accommodation in pursuance to arrangements made under section 21(1)(a) of the National Assistance Act 1948 or care pursuant to paragraph 1 of Schedule 8 to the National Health Service Act 1977,
- Payments are made to him (or to another on his behalf) in pursuance of arrangements under section 57 of the Health and Social Care Act 2001, or
- He requires assistance in the conduct of his own affairs (*e.g. A lasting power of attorney is created in respect of him or an enduring power of attorney is registered in respect of him*).

## What is an activity of a specified nature?

- Any form of teaching, training or instruction, unless the teaching, training or instruction is merely incidental to teaching, training or instruction of persons who are not children or vulnerable adults;
- Any form of care for or supervision of children, unless the care or supervision is merely incidental to care for or supervision of persons who are not children or vulnerable adults;
- Any form of advice or guidance provided wholly or mainly for children, if the advice or guidance relates to their physical, emotional or educational well-being;
- Any form of treatment or therapy provided for a child or vulnerable adult;
- Moderating a public electronic interactive communication service which is likely to be used wholly or mainly by children or vulnerable adults;
- Driving a vehicle which is being used only for the purpose of conveying children and vulnerable adults and any person supervising or caring for the children or vulnerable adult pursuant to arrangements made in prescribed circumstances; and
- Anything done on behalf of a vulnerable adult in such circumstances as are prescribed (*"prescribed" means prescribed by regulations made by the Secretary of State*).

## What is a specified place?

- An educational institution which is exclusively or mainly for the provision of full-time education to children;
- An establishment which is exclusively or mainly for the provision of nursery education (*A nursery education means full-time or part-time education suitable for children who have not attained compulsory school age (whether provided at schools or elsewhere)*);

- A hospital which is exclusively or mainly for the reception and treatment of children; an institution which is exclusively or mainly for the detention of children;
- A children's home (*An establishment is a children's home if it provides care and accommodation wholly or mainly for children.*);
- A home provided in pursuance of arrangements under section 82(5) of the Children Act 1989 (secure accommodation in community homes);
- Relevant childcare premises (*Any part of premises on which a person carries on – any form of child care (education for a child and any other supervised activity for a child) in respect of which he must be registered under the Childcare Act 2006; any form of such childcare in respect of which he may be registered under that Act, whether or not he is so registered; any form of daycare (Day care meaning care provided at any time for children under the age of eight on premises other than domestic premises - within the meaning of Section 79A of the Children Act 1989 in respect of which he must be registered under that Act).*

An activity carried out in a care home (*An establishment is a care home if it provides accommodation, together with nursing or personal care, for persons who are or have been ill; persons who have or have had a mental disorder; persons who are disabled or infirm; persons who are or have been dependent on alcohol or drugs. an establishment is not a care home if it is a hospital; an independent clinic; or a children's home - Care Standards Act 2000*) which is exclusively or mainly for vulnerable adults is a regulated activity relating to vulnerable adults if:

- It is carried out at the establishment frequently by the same person or the period condition is satisfied,
- It is carried out by a person while engaging in any form of work (whether or not for gain),
- It is carried out for or in connection with the purposes of the establishment, and
- It gives that person the opportunity, in consequence of anything he is permitted or required to do in connection with the activity, to have contact with vulnerable adults.

### What is a specified position of responsibility?

- member of the governing body of an educational establishment (*An educational institution which is exclusively or mainly for the provision of full-time education to children; a maintained nursery school, meaning a nursery school which is maintained by a local education authority.*);
- member of a relevant local government body (*a member of a local authority and discharges any education functions, or social services functions of a local authority; is a member of an executive of a local authority which discharges any such functions; a member of a committee of an executive of a local authority which discharges any such functions; a member of an area committee, or any other committee, of a local authority which discharged any such functions*);
- director of children's services of a local authority in England;
- director of adult social services of a local authority in England;
- director of social services of a local authority in Wales;
- chief education officer of a local authority in Wales;
- charity trustee of a children's charity (*A charity is a children's charity if the individuals who are workers for the charity normally include individuals engaging in regulated activity relating to children*);
- charity trustee of vulnerable adults' charity (*A charity is a vulnerable adults' charity if the individuals who are workers for the charity normally include individuals engaging in regulated activity relating to vulnerable adults*);
- member of the Youth Justice Board for England and Wales;
- Children's Commissioner or deputy Children's Commissioner appointed under part 1 of the Children Act 2004;
- Children's Commissioner or deputy Children's Commissioner for Wales;
- Commissioner for older people or deputy Commissioner for older people in Wales
- Operator (*establishes or maintains the database or otherwise exercises any function in relation to the management or control of the database*) of a database established in pursuance of section 12(1)(a) or

(b) or 29(1)(a) or b of the Children Act 2004 (*children service's databases to safeguard and promote and improve the welfare of children*);

- Member of Local Safeguarding Children Board established under section 13 or 31 of that Act;
- Member or chief executive of the Children and Family Court Advisory and Support Service;
- Deputy appointed in respect of a child under section 16(2)(b) of the Mental Capacity Act 2005;
- Member, chief executive or member of staff of IBB.