

## QUEEN'S UNIVERSITY BELFAST

### Policy Statement on the Recruitment of Ex-Offenders

- 1.1 The University is committed to providing equality of opportunity to all applicants for employment, including those with criminal convictions. Information about criminal convictions will be taken into account only when the conviction is considered materially relevant to the role; this includes conflict related offences that pre-date the Belfast (Good Friday) Agreement (April 1998). Any disclosure will be considered in the context of the job description, the nature of the offence and the responsibility for the care of staff, students and public users of the University.
- 1.2 The University requires all applicants for posts within the University to provide details of any previous unspent criminal convictions.
- 1.3 A conviction which has been 'spent' within the meaning of the Rehabilitation of Offenders (Northern Ireland) Order 1978, should not be disclosed. Unspent convictions including conflict related offences will not necessarily prevent an application from being considered. However failure to disclose a previous criminal conviction, which is not spent, will result in disqualification of an applicant, or after appointment, dismissal.
- 1.4 The Rehabilitation of Offenders (Exceptions) Order (NI) 1979 allows for certain types of employment /convictions to be excluded from the legislation. This means that all previous convictions including spent convictions must be declared. Excepted positions include 'regulated' positions, positions where national security may be an issue and professions regulated by law.
- 1.5 The Safeguarding Children and Vulnerable Groups (NI) Order, as amended by the Protection of Freedoms Act 2012, defines regulated activity with children and adults. Criminal history checks will be sought for all individuals engaging in activity that falls within scope of this legislation. Please refer to Appendix 1a, 1b and 1c for the definitions of regulated activity.
- 1.6 The University will ensure that those who are involved in the decision making process regarding criminal convictions will receive training to identify and assess the relevance and circumstances of offences and that they receive appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders. In situations where a criminal conviction is declared, which in the opinion of the Head of Resourcing, or Head of Business Partnering, may be materially relevant, the detail will be forwarded to and considered by a panel which will include the People and Culture Director and two senior managers (drawn from the Registrar, Pro-Vice-Chancellors, Deans, Directors, Heads of School and Chair of the recruitment panel) who will make a decision on the application.
- 1.7 Every subject of a Disclosure certificate will be made aware of the relevant Access NI Code of Practice and a copy will be made available on request.

Updated May 2014

# QUEEN'S UNIVERSITY BELFAST

## Guidance Notes on the Recruitment of Ex-Offenders

### 1. Introduction

- 1.1 This document is intended to provide guidance to those who will be required to make recruitment decisions when considering the relevance of a criminal conviction in relation to the employment being sought.
- 1.2 The University requires all applicants for posts to make a confidential disclosure of unspent criminal convictions and where a candidate has declared an unspent conviction a decision will be required as to whether the application should proceed.

### 2. Spent and Unspent Convictions

- 2.1 The Rehabilitation of Offenders (NI) Order 1978 allows ex-offenders who have stopped offending for a substantial period of time the right not to disclose their criminal record when applying for most posts. Convictions become 'spent' and the ex-offender can legally say 'no' when asked if they have a criminal record. It is illegal for an employer to discriminate against an ex-offender on the grounds of 'spent' convictions. A conviction will become spent depending on the age of the person at the time of conviction and the type and length of sentence received (See Appendix 2).
- 2.2 Certain convictions will never become spent and include custodial sentences of more than two and a half years. When applying for regulated positions all applicants must disclose all spent and unspent convictions.
- 2.3 The Rehabilitation of Offenders (Exceptions) Order (NI) 1979 also allows for certain types of employment/convictions to be excluded from the legislation. This means that all previous convictions including spent convictions must be declared. Excepted positions include regulated positions, positions where national security may be an issue and professions regulated by law (See Appendix 3 for a list of exempted posts and occupations). Please refer to section 5 for details as to how the University will deal with the disclosure of criminal convictions for regulated positions.

### 3. Unspent Convictions

- 3.1 Unspent convictions including conflict related offences will not necessarily prevent an application from being considered. Information about criminal convictions will be taken into account only when the conviction is considered materially relevant to the role.

### 4. Making the Decision

- 4.1 In situations where a criminal conviction is declared, which in the opinion of the Head of Resourcing, or Head of Business Partnering, may be materially relevant, the detail will be forwarded to and considered by a panel which will include the People and Culture Director and two senior managers (drawn from the Registrar, Pro-Vice-Chancellors, Deans, Directors, Heads of School and Chair of the recruitment panel) who will make a decision on the application.

4.2 In making the decision the following factors may be taken into consideration:-

- Whether the conviction or other information revealed is relevant to the position in question.
- The seriousness of the offence or any other matter revealed.
- The length of time since the offence or other matter occurred.
- Whether the applicant has a pattern of offending behaviour or other matters.
- Whether the applicant's circumstances have changed once the offending behaviour or other relevant matters happened; and
- The circumstances surrounding the offence and the explanation/s offered by the applicant.

4.3 When considering the applicant's conviction/s consideration should be given to whether certain convictions may be more relevant to certain posts than others. For example an applicant that has been convicted of a relatively minor motoring offence may not be considered suitable for a post that involves driving. However this conviction may not be as relevant if an applicant who has a similar conviction applies for a clerical position. Appendix 4 sets out questions that should be considered when assessing the relevance of convictions against posts.

4.4 If, after consideration, the University considers that a conviction could be materially relevant and is incompatible with the post then the application will not proceed and notes explaining the reasons for the decision will be held with the application.

4.5 If an applicant for a position does not disclose details of unspent convictions and a conviction history later comes to light then the applicant will be disqualified. If details emerge following appointment, this will result in dismissal.

## 5. Criminal History Checks on Applicants for Regulated Positions

5.1 It is a legal offence for anyone barred from working with children or adults in regulated activity (please refer to Appendix 1a, 1b and 1c for the definitions of regulated activity) to engage in, or seek to engage in, regulated activity from which they are barred. Furthermore it is an offence for a Regulated Activity Provider (the University) to knowingly allow an individual to engage in regulated activity while barred; therefore, barred individuals will not be considered for such a position. To determine whether an individual is barred from regulated activity the University will request an enhanced disclosure certificate (criminal history check) which will include a check of the relevant barred lists.

5.2 When applicants are completing an application form for regulated positions they will be asked to provide details of all unspent convictions and will be asked to complete a Disclosure Certificate Application Form which should be returned with their application form. When the successful applicant/s are identified the counter signatory will complete the rest of the form and forward it to ANI. An Enhanced Disclosure Certificate will be provided by ANI normally within 4 weeks.

5.3 Enhanced Disclosure Certificate contain details of any spent and unspent convictions, as well as any cautions, informed warnings and diversionary youth conferences that are not "protected" as defined by the Rehabilitation of Offenders (Exceptions) (Northern Ireland) Order 1979, as amended in 2014. They also indicate if there are no such matters on record. Enhanced Disclosure Certificates may also contain non-conviction information (for example attempted prosecutions which were unsuccessful) that are held on police records which a Chief Police Officer thinks may be relevant to

the post applied for (i.e. “soft/police intelligence”). The police may also include information that is “protected” and has been filtered by AccessNI on the basis that it “might be relevant and ought to be disclosed”. EDCs also contain the results of checks of either or both of the following lists:

- The Children’s Barred List
- The Adult’s Barred List

5.4 If an individual is confirmed as appearing on any of the relevant barred lists they will automatically be unsuccessful in their application. It is an offence for anyone who is on the lists to work with children or vulnerable groups and it is an offence for the University to employ anyone that appears on the lists.

5.5 The University will consider all disclosures against the relevance of the post applied for as regulated positions fall under the Rehabilitation of Offenders (Exceptions) Order (NI) 1979. Please refer to the ‘Making a Decision at section 4.

5.6 Enhanced Disclosure Certificates are only valid at the date of issue.

5.7 If the applicant disputes the information contained on the criminal history check/disclosure certificate then the University will follow ANI’s disputes procedure.

5.8 If an applicant for a regulated position does not disclose details of unspent convictions on their application form and a conviction history later comes to light then the applicant will be disqualified.

## 6. Handling, Use and Storage of Disclosure Information

6.1 As an organisation using Access Northern Ireland to help assess the suitability of applicants for positions of trust, Queen’s University Belfast complies fully with AccessNI’s Code of Practice regarding the correct handling, use, storage retention and disposal of Disclosure Applications and Disclosure Information. Queen’s University also complies fully with its obligations under the Data Protection Act 1998 and other relevant legislation pertaining to the safe handling, storage, retention and disposal of Disclosure information.

6.2 Disclosure information will be kept securely, in a lockable, non-portable, storage container with access strictly controlled and limited to those who are entitled to see it as part of their duties.

6.3 In accordance with section 124 of the Police Act 1997, Disclosure information is only passed to those who are authorised to receive it in the course of their duties *except where a student has given their express permission for their information to be divulged to third parties*. The University maintains records of all those to whom Disclosures or Disclosure information has been revealed and it is a criminal offence to pass this information to anyone who is not entitled to receive it.

6.4 Disclosure information is used only for the specific purpose for which it was requested and for which the applicant’s full consent has been given.

6.5 Once a recruitment (or other relevant e.g. regulatory or for licensing purposes) decision has been taken, Disclosure information will not be kept for longer than necessary. Information will not be retained and will be destroyed within 6 months of a decision, recruitment or otherwise, being made. For students the information will be held until completion of their studies.

6.6 Once the retention period has elapsed, the University will ensure that Disclosure information is immediately destroyed by secure means ie by shredding, pulping or burning. While awaiting destruction, Disclosure information will not be kept in any unsecured receptacle (eg waste-bin or confidential sack). We will not keep any photocopy or other image of the Disclosure or any copy or representation of the contents of a Disclosure or any other relevant non-conviction information supplied by police but not included in the Disclosure. However, despite the above, we may keep a record of the date of issue of a Disclosure, the name of the subject, the type of Disclosure requested, the position for which the Disclosure was requested, the AccessNI unique reference number of the Disclosure Certificate and the details of the recruitment decision taken.

7. Additional Information

7.1 Information provided to applicants for regulated positions is given at Appendix 5 and a Glossary of Terms is provided in Appendix 6.

## **Regulated Activity in relation to Children: scope**

Factual note by HM Government

Regulated activity is work that a barred person must not do. This note provides information on the scope of Regulated Activity in relation to children, defined in the Safeguarding Vulnerable Groups (SVG) Act 2006 and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, both as amended (in particular by, respectively, section 64 and Schedule 7, Protection of Freedoms Act 2012). This note is about the law in England and Wales, and in Northern Ireland.

This note comprises (I) a short summary, and (II) a full description.

Regulated activity still excludes family arrangements; and personal, non-commercial arrangements.

### **(I) Summary**

The new definition of regulated activity (i.e. work that a barred person must not do) in relation to children comprises, in summary:

- (i) unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/ guidance on well-being, or drive a vehicle only for children;
- (ii) work for a limited range of establishments ('specified places'), with opportunity for contact: e.g. schools, children's homes, childcare premises. Not work by supervised volunteers;

Work under (i) or (ii) is regulated activity only if done regularly: "regularly" is defined in detail on the following pages under items (a) to (f).

HM Government is publishing statutory guidance on supervision of activity that would be regulated activity if unsupervised.

- (iii) relevant personal care, e.g. washing or dressing; or health care by or supervised by a professional;
- (iv) registered childminding; and foster-carers.

A full detailed description of the above scope follows below.

**(II) Full description of scope**

**Part 1: Regulated Activity for children – Activities**

**Part 2: Regulated Activity for children – Establishments**

<b>Part 1: Regulated Activity in relation to children - Activities</b>	
<p>The activities in the left-hand column are regulated activity in relation to children, subject to:</p> <ul style="list-style-type: none"> <li>• exceptions in the right-hand column;</li> <li>• different provisions for “establishments” (specified places) in Part 2 below.</li> </ul> <p>Do not read the left-hand column in isolation from the right-hand column or from Part 2.</p> <p>In the right-hand column:</p> <ul style="list-style-type: none"> <li>• “new” exceptions are those in the 2012 Act;</li> <li>• “existing” exceptions are already in the 2006 Act or 2007 Order as amended before the 2012 Act, or in secondary legislation under it.</li> </ul>	

<b>Activity</b>	<b>Exceptions – not Regulated Activity</b>
All of regulated activity.	Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity in relation to children. This is the “peer exemption”.

In para 2(1) of Schedule 4 <sup>1</sup> :	
<p>(a) Teaching, training or instruction of children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period, or overnight*.</p> <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised. <i>Para 1(15)<sup>2</sup></i>.</p> <p>*Sources:            - <i>once a week: guidance, March 2010, Annex B, page 70 para B.12;</i>            - <i>four or more days/ overnight: Schedule 4, para 10(1) as amended.</i></p>	<p>New:</p> <ul style="list-style-type: none"> <li>• Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. <i>Para 2(3A)</i></li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity relating to a child in the course of his employment, not by a person for whom arrangements exist principally for that purpose.</li> <li>▪ Activity merely incidental to activity with adults.</li> </ul>

<sup>1</sup> References to “Schedule 4” should be read as “Schedule 2” in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (SVG Order).

<sup>2</sup> Para 1(13) in the SVG Order.

Activity	Exceptions – not Regulated Activity
<p>(b) Care or supervision of children if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight.</p> <ul style="list-style-type: none"> <li>▪ See rows (i) to (iii) below re types of care.</li> </ul> <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised.</p>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. <i>Para 2(3B)(b)</i>.</li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.</li> <li>▪ Activity merely incidental to activity with adults.</li> </ul>
<p>Particular types of care within (b) above, which apply to any child, even if done only once: (i) to (ii) below.</p>	
<p>(i) Relevant personal care. <i>Para 1(1B)</i>:            (a) physical help in connection with eating or drinking, for reasons of illness or disability;            (b) physical help for reasons of age, illness, or disability, in connection with:</p> <ul style="list-style-type: none"> <li>• (i) toileting (including re menstruation);</li> <li>• (ii-iii) washing, bathing, or dressing;</li> </ul> <p>(c)-(d) prompting with supervision, in relation to (a)-(b), where the child is otherwise unable to decide;            (e)-(f) other training or advice in relation to (a)-(b).</p>	
<p>(ii) Health care. <i>Para 1(1C)</i>:            All forms of health care relating to physical or mental health including palliative care and procedures similar to medical or surgical care.</p>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Health care not by, or directed or supervised by, a health care professional*. <i>Para 2(3B)(a)</i>.</li> </ul> <p>*Defined by reference to regulatory bodies. <i>Para 1(1C)</i>.</p>
<p>(c) Advice or guidance provided wholly or mainly for children relating to their physical, emotional or educational well-being if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight.</p>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Legal advice. <i>Para 2(3C)</i>;</li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.</li> </ul>
<p>(a), (b) &amp; (c): Definition of “overnight”:            In relation to teaching, training or instruction; care or supervision; or advice or guidance, it is also regulated activity if carried out (even once) at any time between 2am and 6am and with an opportunity for face-to-face contact with children. <i>Schedule 4, Para 10(2)</i>.</p>	

Activity	Exceptions – not Regulated Activity
Former category (d), treatment or therapy, is now replaced by “health care” provisions.	
(e) Moderating a public electronic interactive communication service likely to be used wholly or mainly by children, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period.	Existing: <ul style="list-style-type: none"> <li>▪ Activity by a person who does not have access to the content of the matter, or contact with users.</li> </ul>
(f) Driving a vehicle being used only for conveying children and carers or supervisors under arrangements as prescribed*, carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period. *Prescribed by SI 2009-1548 <sup>3</sup> .	

In para 1 of schedule 4:	
(3) Early years or later years childminding* with a requirement to register, or voluntary registration, under Childcare Act 2006 <sup>4</sup> .  *That is: on domestic premises, for reward; as opposed to “childcare premises”, part 2 below.	
(5) Fostering** a child. **Defined at section 53 <sup>5</sup> .	Existing: <ul style="list-style-type: none"> <li>▪ Care arranged by family members and not for reward is not regulated activity. <i>Section 53(8)</i><sup>6</sup>.</li> <li>▪ Local Authority can foster child with barred person who is, or lives with, a relative of the child. <i>SI 2009-1797, Art 3(2)</i>.</li> </ul>

<sup>3</sup> In Northern Ireland: Statutory Rule S.R. 2009/306.

<sup>4</sup> In Northern Ireland: requirement to register is provided for under Children (Northern Ireland) Order 1995.

<sup>5</sup> In Northern Ireland: Article 55, SVG Order 2007.

<sup>6</sup> In Northern Ireland: family or personal relationships are exempt under Article 3, SVG Order 2007.

Activity	Exceptions – not Regulated Activity
<p>(6) &amp; (9) to (13)<sup>***</sup>: Wales only:</p> <ul style="list-style-type: none"> <li>▪ child minding with requirement to register under Children Act 1989 including activities that require registration if child under eight;</li> <li>▪ functions of Children’s Commissioner for Wales and deputy;</li> <li>▪ inspection functions in relation to education, training, childcare and children’s health or social care.</li> </ul> <p><sup>***</sup>In Northern Ireland: (6), (6A), (7A) &amp; (8):</p> <ul style="list-style-type: none"> <li>• Guardians Ad Litem;</li> <li>• Controllers appointed under Mental Health (NI) Order 1986;</li> <li>• Inspection/ Registration functions in education, training, juvenile justice, childcare, and children’s health or social care.</li> </ul>	
<p>(14)<sup>7</sup> Day to day management on a regular basis of a person providing a regulated activity in Schedule 4, paragraphs 1(1) or (2) – that is, activity:</p> <ul style="list-style-type: none"> <li>- at (a) to (f) above;</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>- in establishments in part 2 below;</li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>- (9C) or (11) in Wales only.</li> </ul>	

<sup>7</sup> In Northern Ireland: Para 12 of Schedule 2 in SVG Order 2007.

## Part 2: Regulated Activity in relation to Children - Establishments

An activity is regulated activity in relation to children if carried out (subject to exceptions below):

- in one of the following establishments;
- frequently (once a week or more often), or on 4 or more days in a 30-day period;
- by the same person, engaged in work for or in connection with the purposes of the establishment; and
- it gives the person the opportunity, in their work, to have contact with children.

Day to management or supervision on a regular basis of a person providing the above regulated activity for children is regulated activity for children.

Establishment	Exceptions – not Regulated Activity
<p>Schedule 4, para 3(1):</p> <p>(a) schools (all or mainly full-time, for children);</p> <p>(aa) pupil referral units (also known as Short Stay Schools) not falling within the above;</p> <p>(b) nursery schools;</p> <p>(d) institutions for the detention of children;</p> <p>(e) &amp; (f) children’s homes;</p> <p>(fa) children’s centres in England;</p> <p>(g) childcare premises (including nurseries).</p> <p>Day to day management or supervision on a regular basis of a volunteer activity which would be regulated if unsupervised. <i>Para 1(15).</i></p> <p><b>In Northern Ireland (under Schedule 2, Para 3(1) of the SVG Order):</b></p> <p>(a) schools (all or mainly full-time, for children);</p> <p>(b) nursery schools;</p> <p>(bb) Alternative Education Provision;</p> <p>(c) a children’s hospital;</p> <p>(d) institutions for the detention of children;</p> <p>(e) children’s homes;</p> <p>(f) childcare premises.</p> <p>In Northern Ireland: day to day management or supervision on a regular basis of a volunteer activity which would be regulated if unsupervised. <i>Para 1(13).</i></p>	<p>New:</p> <ul style="list-style-type: none"> <li>▪ Activity by person contracted (or volunteering) to provide occasional or temporary services (not teaching, training or supervision of children). <i>Para 1(2A) &amp; (2B)(a);</i></li> <li>▪ Volunteering, under day to day supervision of another person engaging in regulated activity. <i>Para 1 (2B)(b).</i></li> </ul> <p>Existing:</p> <ul style="list-style-type: none"> <li>▪ Activity by a person in a group assisting or acting on behalf of, or under direction of another person engaging in regulated activity;</li> <li>▪ childcare premises which are the home of a parent etc. of at least one child to whom the childcare or child minding is provided;</li> <li>▪ for activity undertaken regularly in a number of different establishments, but only infrequently in each: each establishment is only arranging the activity infrequently, so each establishment is not a regulated activity provider in relation to that activity.</li> </ul>

Note: Categories for office holders (“Positions” - Para 1(9) and Para 4) and for Inspectorates in England (sub-paragraphs of Para 1) are removed. In Northern Ireland, categories for office holders (“Positions” – Para 1(7) and Para 4) are removed.

*Department for Education and Department of Health, Social Services and Public Safety (Northern Ireland), June 2012*

## **Statutory guidance: Regulated Activity (children) - supervision of activity with children which is regulated activity when unsupervised**

1. This document fulfils the duty in legislation<sup>i ii</sup> that the Secretary of State must publish statutory guidance on supervision of activity by workers with children, which when unsupervised is regulated activity. This guidance applies in England, Wales and Northern Ireland. It covers settings including but not limited to schools, childcare establishments, FE colleges, youth groups and sports clubs.

2. For too long child protection policy has been developed in haste and in response to individual tragedies, with the well-intentioned though misguided belief that every risk could be mitigated and every loophole closed. The pressure has been to prescribe and legislate more. This has led to public confusion, a fearful workforce and a dysfunctional culture of mistrust between children and adults. This Government is taking a different approach.

3. We start with a presumption of trust and confidence in those who work with children, and the good sense and judgment of their managers. This guidance applies when an organisation decides to supervise with the aim that the supervised work will not be regulated activity (when it would be, if not so supervised). In such a case, the law makes three main points:

- there must be supervision by a person who is in regulated activity<sup>iii</sup>;
- the supervision must be regular and day to day; and
- the supervision must be “reasonable in all the circumstances to ensure the protection of children”.

The organisation must have regard to this guidance. That gives local managers the flexibility to determine what is reasonable for their circumstances. While the precise nature and level of supervision will vary from case to case, guidance on the main legal points above is as follows.

4. Supervision by a person in regulated activity / regular and day to day: supervisors must be in regulated activity themselves<sup>iv</sup>. The duty that supervision must take place “on a regular basis” means that supervision must not, for example, be concentrated during the first few weeks of an activity and then tail off thereafter, becoming the exception not the rule. It must take place on an ongoing basis, whether the worker has just started or has been doing the activity for some time.

5. Reasonable in the circumstances: within the statutory duty, the level of supervision may differ, depending on all the circumstances of a case. Organisations should consider the following factors in deciding the specific level of supervision the organisation will require in an individual case:

- ages of the children, including whether their ages differ widely;
- number of children that the individual is working with;
- whether or not other workers are helping to look after the children;
- the nature of the individual’s work (or, in a specified place such as a school, the individual’s opportunity for contact with children);
- how vulnerable the children are (the more they are, the more an organisation might opt for workers to be in regulated activity);

- how many workers would be supervised by each supervising worker.
6. In law, an organisation will have no entitlement to do a barred list check on a worker who, because they are supervised, is not in regulated activity.

## **EXAMPLES**

### ***Volunteer, in a specified place***

Mr Jones, a new volunteer, helps children with reading at a local school for two mornings a week. Mr Jones is generally based in the classroom, in sight of the teacher. Sometimes Mr Jones takes some of the children to a separate room to listen to them reading, where Mr Jones is supervised by a paid classroom assistant, who is in that room most of the time. The teacher and classroom assistant are in regulated activity. The head teacher decides whether their supervision is such that Mr Jones is not in regulated activity.

### ***Volunteer, not in a specified place***

Mr Wood, a new entrant volunteer, assists with the coaching of children at his local cricket club. The children are divided into small groups, with assistant coaches such as Mr Wood assigned to each group. The head coach oversees the coaching, spends time with each of the groups, and has sight of all the groups (and the assistant coaches) for most of the time. The head coach is in regulated activity. The club managers decide whether the coach's supervision is such that Mr Wood is not in regulated activity.

### ***Employee, not in a specified place***

Mrs Shah starts as a paid activity assistant at a youth club. She helps to instruct a group of children, and is supervised by the youth club leader who is in regulated activity. The youth club managers decide whether the leader's supervision is such that Mrs Shah is not in regulated activity.

In each example, the organisation uses the following steps when deciding whether a new worker will be supervised to such a level that the new worker is not in regulated activity:

- consider whether the worker is doing work that, if unsupervised, would be regulated activity. If the worker is not, the remaining steps are unnecessary;
  - consider whether the worker will be supervised by a person in regulated activity, and whether the supervision will be regular and day to day, bearing in mind paragraph 4 of this guidance;
  - consider whether the supervision will be reasonable in all the circumstances to ensure the protection of children, bearing in mind the factors set out in paragraph 5 of this guidance;
- and if it is a specified place such as a school:
- consider whether the supervised worker is a volunteer<sup>v</sup>.

***Department for Education / Department of Health, Social Services and Public Safety (Northern Ireland), September 2012***

End-notes: see overleaf

## End-notes

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<sup>i</sup> Safeguarding Vulnerable Groups Act 2006, amended by Protection of Freedoms Act 2012: Schedule 4, paragraph 5A: guidance must be “*for the purpose of assisting*” organisations “*in deciding whether supervision is of such a kind that*” the supervisee is not in regulated activity.

<sup>ii</sup> Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, Schedule 2, paragraph 5A, is as above on guidance on “supervision” for Northern Ireland.

<sup>iii</sup> If the work is in a specified place such as a school, paid workers remain in regulated activity even if supervised.

<sup>iv</sup> From 2013-14, the Government plans to commence a statutory duty on an organisation arranging regulated activity (under the 2006 Act or 2007 Order, both as amended) to check that a person entering regulated activity is not barred from regulated activity; and plans to commence a stand-alone barring check service by the new Disclosure and Barring Service.

<sup>v</sup> A volunteer is: in England and Wales, a person who performs an activity which involves spending time, unpaid (except for travel and other approved out-of-pocket expenses), doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives; in Northern Ireland, a person engaged, or to be engaged, in an activity for a non-profit organisation or person which involves spending time unpaid (except for travel and other approved out-of-pocket expenses) doing something which amounts to a benefit to some third party other than, or in addition to, a close relative.

# Regulated activity (adults)

*The definition of 'regulated activity' (adults) as defined by the Safeguarding Vulnerable Groups Order 2007 from 10<sup>th</sup> September 2012*

## Factual Note

This document provides information on the scope of Regulated Activity in relation to adults, as defined in the Safeguarding Vulnerable Groups Order 2007 (SVGO) and as amended by the Protection of Freedoms Act 2012 (PoFA)<sup>1</sup>. This note describes the situation in Northern Ireland.

The definition of regulated activity for adults from 10th September 2012 will identify the activities provided to any adult which, if any adult requires them, will mean that the adult will be considered vulnerable at that particular time. The SVGO will no longer label adults as 'vulnerable' because of the setting in which the activity is received, nor because of the personal characteristics or circumstances of the adult receiving the activities.<sup>2</sup>

This means, for example, anyone providing personal care to an adult is in regulated activity irrespective of whether that occurs in, say, a hospital, a care home, a day care centre, a prison or in sheltered housing.

There is no longer a requirement for a person to carry out the activities a certain number of times before they are engaging in regulated activity.<sup>3</sup> Any time a person engages in the activities set out below, they are engaging in regulated activity.

### General points

#### **1. Regulated activity continues to exclude any activity carried out in the course of family relationships, and personal, non-commercial relationships.<sup>4</sup>**

a. Family relationships involve close family (e.g. parents, siblings, grandparents) and relationships between two people who live in the same household and treat each other as family.

b. Personal, non commercial relationships are arrangements where either no money changes hands, or any money that does change hands is not part of a commercial relationship (for example, gifting a friend money for petrol after they have driven you to the hospital), and the arrangement is made between friends or family friends.

#### **2. An adult is a person aged 18 years or over.**

#### **3. A person whose role includes the day to day management or supervision of any person who is engaging in regulated activity, is also in regulated activity.**

<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted>

<sup>2</sup> The definition of 'vulnerable adults' in Article 3 SVGO has been repealed.

<sup>3</sup> See amendments to Part 3 of Schedule 2 to the SVGO.

<sup>4</sup> Article 4 SVGO provides for this; Article 4 was not amended by the PoFA

## NEW DEFINITION OF REGULATED ACTIVITY

There are six categories within the new definition of regulated activity. These are set out below.

### PROVIDING HEALTH CARE

1. The provision of **health care** by any **health care professional** to an adult, or the provision of health care to an adult under the direction or supervision of a health care professional, is regulated activity.

a. A **health care professional** is a person who is regulated by one of the following professional regulators:<sup>5</sup>

General Medical Council  
General Dental Council  
General Optical Council  
General Osteopathic Council  
General Chiropractic Council  
Pharmaceutical Society of Northern Ireland  
Nursing and Midwifery Council  
Health Professions Council

b. **Health care** includes all forms of health care provided for adults, whether relating to physical or mental health, and includes palliative care. This includes diagnostic tests and investigative procedures. **Health care** also includes procedures that are similar to forms of medical or surgical care that are not provided in connection with a medical condition. An example of this is taking blood from a blood donor or cosmetic surgery.

2. The provision of **psychotherapy and counselling** to an adult which is related to health care the adult is receiving from, or under the direction or supervision of, a health care professional, is regulated activity. This would include the provision of psychotherapy and counselling over the telephone. Life coaching is excluded.<sup>6</sup>

3. **First aid**, when any person administering the first aid is doing so on behalf of an organisation established for the purpose of providing first aid (for example, St John Ambulance Service), it is regulated activity. This includes first aid given by First Responders<sup>7</sup>.

4. A worker employed for another purpose who volunteers, or is designated, to be that organisation's first aider is not in regulated activity. For example, a person who works in a department store whose role includes being a first aider is not engaging in regulated activity.

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<sup>5</sup> Listed in s 25(3) of the National Health Service Reform and Health Care Professions Act 2002.

<sup>6</sup> The secondary legislation that will bring psychotherapy and counselling into regulated activity is soon to be laid before Parliament.

<sup>7</sup> First Responders are members of community based teams, who attend certain 999 calls and provide emergency support until an ambulance arrives.

5. **Members of peer support groups** (for example, Alcoholics Anonymous), are not in regulated activity, even if the group is directed or supervised by a health care professional.

6. All staff who work in **community pharmacies and opticians**, who are not regulated health care professionals, will be excluded from regulated activity. For example, a person who works in a high street pharmacy providing health advice to customers over the pharmacy counter will not be in regulated activity.

7. Staff in GP surgeries or dental practices who do not provide health care (for example, receptionists) will not be in regulated activity.

#### **PROVIDING PERSONAL CARE**

1. Anyone who provides an adult with physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of the adult's age, illness or disability, is in regulated activity.

2. Anyone who prompts and then supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without that prompting and supervision, is in regulated activity.

3. Anyone who trains, instructs or provides advice or guidance, which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability, is in regulated activity.

4. There is one exception to this. Excluded from regulated activity is any physical assistance provided to an adult in relation to the care of their hair when that assistance relates only to the cutting of the adult's hair. This is to ensure that hairdressers who cut the hair of patients and residents in hospitals and care homes are not engaging in regulated activity.

#### *Illustrative examples:*

1. A care assistant in a care home who cuts and files an adult's nails to keep the nails short and safe, because the adult cannot do it themselves, because, for example, they cannot see well enough, is engaging in regulated activity.

2. A beauty therapist who attends a day care centre once a week and provides manicures for anyone who would *like* one, instead of for people who *need them* because of their age, illness or disability, is not engaging in regulated activity.

3. A volunteer who prepares and serves a meal to an adult in their own home (but does not feed the adult) is not engaging in regulated activity. To be engaged in regulated activity you must provide physical assistance to the person, for example spoon feeding that person, or you must be prompting and supervising (for example, prompting and supervising a person with dementia, because without it they would not eat), or you must be training or instructing (for example, teaching a person who has suffered a stroke to eat using adapted cutlery).

4. A health care assistant on a hospital ward who feeds an adult because they are too frail to feed themselves is engaging in regulated activity.

5. A worker in a care home who reminds a person with dementia to eat their lunch, and ensures they do so is in regulated activity.

### **PROVIDING SOCIAL WORK**

The activities of regulated social workers in relation to adults who are clients or potential clients are in regulated activity. These activities include assessing or reviewing the need for health or social care services, and providing ongoing support to clients.

### **ASSISTANCE WITH GENERAL HOUSEHOLD MATTERS**

Anyone who provides day to day assistance to an adult because of their age, illness or disability, where that assistance includes at least one of the following, is in regulated activity:

- a. managing the person's cash,
- b. paying the person's bills, or
- c. shopping on their behalf.

#### *Illustrative examples:*

1. A volunteer who collects shopping lists and the cash to pay for the shopping from older adults' homes, who then does the shopping on their behalf, is engaging in regulated activity.

2. A befriender who helps a disabled person compile their weekly shopping list is not in regulated activity.

### **ASSISTANCE IN THE CONDUCT OF A PERSON'S OWN AFFAIRS**

Anyone who provides assistance in the conduct of an adult's own affairs by virtue of:

- Enduring power of attorney within the meaning of the Enduring Powers of Attorney (Northern Ireland) Order 1987
- An order or direction in relation to a person's property and affairs of the High Court made under Article 99 of the Mental Health (Northern Ireland) Order 1986
- Being appointed a controller by the High Court under Article 101 of the Mental Health (Northern Ireland) Order 1986
- Receiving payments on behalf of that person under the Social Security Administration (Northern Ireland) Act 1992

is in regulated activity.

### **CONVEYING**

1. Any drivers and any assistants who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving, health care, relevant personal care or relevant social work, are in regulated activity. The driver does, or the person assists in, such conveying for the purpose of enabling the adult to receive services. Health care, relevant personal care and relevant social work are discussed above.

2. In addition, hospital porters, Patient Transport Service drivers and assistants, employees of the Northern Ireland Ambulance Service Health and Social Care Trust and staff within an emergency department who transport an adult because of their age, illness or disability to or from places where they have received, or will be receiving, health care, relevant personal care or relevant social work, are also in regulated activity.

3. Conveying does not include licensed trips taken for purposes other than to receive health care, personal care or social work (for example, trips for pleasure are excluded).

#### *Illustrative examples:*

1. A person who volunteers to take an adult to and from their GP appointment on behalf of a community group is in regulated activity. It would not matter if that person knows, or is friends with, the adult they were taking to the appointment if the conveying is on behalf of the group.

2. A friend who takes their neighbour to a hospital appointment would not be in regulated activity, as this is a personal relationship.<sup>8</sup>

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<sup>8</sup> See p.1 of this note

### Information on the Rehabilitation of Offenders (NI) Order 1978

The following sentences become 'spent' after fixed periods from the date of conviction. If a conviction is spent it does not need to be disclosed, even when asked. For regulated positions, disclosure of spent convictions will occur through the disclosure process.

Sentence	Aged 18 or over at conviction	Under 18 years at conviction
Absolute Discharge	6 months	
Probation Order, Bind Over, Conditional Discharge, Care/Supervision Order	Date Order ceases OR 1 year – whichever is longer	
Attendance Centre Order Juvenile Justice Centre Order Youth Conference Order, Reparation Order, Community Responsibility Order	1 year after Order expires	
Hospital Order	5 years or 2 years after the Order expires – whichever is longer	
Fine, Community Service Order, Combination Orders	5 years	2 ½ years
Prison – (immediate or suspended) OR Young Offenders Centre – sentence of 6 months or less	7 years	3 ½ years
Prison – (immediate or suspended) OR Young Offenders Centre over 6 months up to and including 30 months	10 years	5 years
A period of detention of less than 6 months under Article 45 of the CJ (Children) (NI) Order 1998	N/A	3 years
A period of detention over 6 months but less than 30 months under Article 45 of the CJ (Children) (NI) Order 1998	N/A	5 years
<b>NB: Custodial Sentence of more than Two and a Half Years (30 months) can never become spent</b>		

- Consecutive prison sentences count as a single term when calculating the rehabilitation period.
- If more than one sentence was imposed for an offence, the longer rehabilitation period applies.
- If a person receives a new conviction during a rehabilitation period:
  1. for a summary offence (ie : can only be tried at Magistrates Court) both rehabilitation periods expire separately.
  2. for a more serious offence (ie: which could be tried at the Crown Court) neither conviction will become spent until the longest period expires.
- Cautions, reprimands and final warnings are not considered to be convictions and become 'spent' immediately unless relevant to 'Excepted' posts.
- A spent conviction will remain on your criminal record.

**The Rehabilitation of Offenders (Exceptions) Order (NI) 1979 (amended by 1987, 2001, 2003, 2009, 2012 and 2014 Orders)**

A range of occupations are exempted from the legislation and for these posts spent and unspent convictions must be disclosed. The list of posts is extensive and can be summarised as follows:

- Work that involves contact with children, young people and or vulnerable adult groups – eg : provision of health care or social services, work with children such as youth work, education, or with adults with learning disabilities, mental illness, the elderly.
- Professions that are regulated by law – eg: medical practitioner, nurse, chemist, optician, accountant, manager of an insurance company.
- Posts involving national security – eg : security personnel or senior civil service posts.
- Posts concerned with administration of justice – eg : police officers, solicitors, probation officers, traffic wardens, judges, prison officers.

Applicants for relevant posts should declare all unspent convictions on their application form. Details of spent convictions will be ascertained through the disclosure process.

For confidential advice or further information please contact the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) on 028 9032 0157.

## Excepted Employment

The Rehabilitation of Offenders (Exceptions) Order (NI) overrules the rights otherwise guaranteed by the 1978 Order. This means that an ex-offender must disclose information about spent and current convictions; provided that an employer asks the question and that they clearly indicate that the post is an Excepted one.

Exempted posts and occupations include: (amended 1987, 2001 and 2003)

- Judicial Appointments.
- Employment in the office of the Director of Public Prosecutions.
- Justices' clerks and justices' clerks assistants.
- Constables, police trainees, military, naval and air force police and certain posts involving police work or assisting the police.
- Personnel working in the Services Fraud Office, the National Crime Squad, the National Crime and Intelligence Services, HM Customs and Excise and the Office of the Police Ombudsman for Northern Ireland.
- Employment in prison services, including appointment to a Board of Visitors.
- Traffic Wardens.
- Probation Officers.
- Any office or employment concerned with the provision to persons aged under 18 of accommodation, care, leisure and recreational facilities, schooling, social services, supervision or training, being an office or employment or such kind to enable the holder to have access in the course of his normal duties which are carried out wholly or partly on the premises where such provision takes place.
- Employment connected with the provision of social services which involves access to the young, the old, the mentally or physically handicapped, or the chronic sick or disabled.
- Controller appointed by the office of Care and Protection.
- Employment concerned with the provision of health services within the National Health Service or otherwise, which involves patients.
- Firearms dealer.
- Any occupation requiring a licence, certificate, or registration from the Gaming Board.
- Director, controller or manager of an insurance company.
- Director or other officer of a building society.
- Occupations under the control of the Financial Services Authority and listed bodies in the Financial Services and Markets Act 2000.
- Investment Company Director.
- Any member of a UK recognised Investment exchange or UK recognised clearing house.
- Any occupation concerned with the running of a private hospital or nursing home.
- Any person or authorised (or subsidiary) company carrying out duties for, or on behalf of, the Civil Aviation Authority to provide air traffic services.
- National Lottery Commission Personnel and Lottery Licence Holders/Proprietors.
- Any occupation for which a certificate of fitness to explosives is required.
- Medical Practitioner.
- Barrister.
- Solicitor / European Lawyer.
- Chartered Accountant, Certified Accountant.
- Chartered Psychologist.
- Dentist, Dental Hygienist, Dental Auxiliary.
- Veterinary Surgeon.

- Nurse, Midwife.
- Ophthalmic Optician, Dispensing Optician.
- Pharmaceutical Chemist.
- Teacher.
- Any profession to which Professions Supplementary to Medicine Act 1960 applies and which is undertaken following registration under that Act, e.g. physiotherapists, radiographers.

### Questions to be considered when assessing the relevance of Criminal Convictions against the post being interviewed for

For applicants whose convictions do not automatically exclude them from being shortlisted for interview the following factors should be considered:

1. Whether the conviction or other information revealed is relevant to the position in question.
2. The seriousness of the offence or any other matter revealed.
3. The length of time since the offence or other matter occurred.
4. Whether the applicant has a pattern of offending behaviour or other matters.
5. Whether the applicant's circumstances have changed since the offending behaviour or the other relevant matters happened; and
6. The circumstances surrounding the offence and the explanation/s offered by the applicant.

With regards to point one the panel should consider the following questions against the post being filled:

<b>Type of Offence</b>	<b>Questions to be Considered</b>
Motoring Offences	Is there a responsibility to drive on behalf of Queen's?  Is driving an essential task?
Offences of Dishonesty	Does the post involve responsibility for cash or the administration of accounts?  What administrative checks and balances are already in place?
Public Order and Damage to Property	Are there particular concerns in the workplace in regard to health and safety?  Would the postholder have specific responsibility for equipment/property?
Drugs	Will the person be required to operate machinery?  Are there particular concerns in the workplace in regard to health and safety?  Is there access to a substance that could be abused?  Would other employees be at risk?  Are there child protection concerns?
Offences of Violence	Does the post involve contact with the public or students?  Are there any aspects of the job that are particularly stressful?  Would other employees be at risk?  Are there child protection concerns?  Will the person have managerial responsibilities?

## Vetting Information

### **[Context to be amended to reflect each School/Directorate's circumstances, but no content should be removed]**

The position you have applied for involves working with children and/or adults in 'regulated activity'. The Safeguarding Children and Vulnerable Groups (NI) Order, as amended by the Protection of Freedoms Act 2012, defines regulated activity with children and adults. The current legislative framework enables the University to conduct criminal history checks (Enhanced Disclosure Checks) on anyone engaging in regulated activity.

Enhanced Disclosure Checks are only requested for the preferred candidate when the post is being offered and all offers are subject to a satisfactory check.

The organisation that processes these checks is called AccessNI and a check may take up to four weeks to complete. After the check is completed an Enhanced Disclosure Certificate (EDC) is issued. This certificate contains details of any spent and unspent convictions, as well as any cautions, informed warnings and diversionary youth conferences that are not "protected" as defined by the Rehabilitation of Offenders (Exceptions) (Northern Ireland) Order 1979, as amended in 2014. It also indicates if there are no such matters on record. Enhanced Disclosure Certificates may also contain non-conviction information (for example attempted prosecutions which were unsuccessful) that are held on police records which a Chief Police Officer thinks may be relevant to the post applied for (i.e. "soft/police intelligence"). The police may also include information that is "protected" and has been filtered by AccessNI on the basis that it "might be relevant and ought to be disclosed". EDCs also contain the results of checks of either or both of the following lists:

- The Children's Barred List
- The Adult's Barred List

To enable the University to obtain an Enhanced Disclosure Certificate you should complete the attached Application form and provide copies of the relevant identification as specified. Guidance on completion of this form is attached. We will only request a check of the barred lists for the workforce you will be engaging in regulated activity with e.g. the children's workforce or the vulnerable adults' workforce.

Any information received will be treated confidentially, in compliance with ANI's Code of Practice, in line with the University's Recruitment of Ex-Offenders Policy and in line with Data Protection principles.

The disclosure of a criminal conviction or 'soft intelligence' may not necessarily prevent you from obtaining a position with the University, however, if you appear on the barred lists it is an offence for you to engage in, or seek to engage in, regulated activity.

Please note, all queries regarding the Disclosure Process should be directed to:

AccessNI  
PO Box 1085  
Belfast  
BT5 9BD

Tel: 0300 200 7888 Email: [accessni@ani.x.gov.uk](mailto:accessni@ani.x.gov.uk)

## Glossary of Terms

- **Conviction**

A conviction is a record of having been found guilty by a court of a criminal offence. Accordingly:

- (a) If someone is recorded by a court as being guilty of committing a criminal offence he is said to have been 'convicted' by the court of committing the offence; and
- (b) If someone is said to have a 'conviction' for an offence, he has a record of having been found guilty by the court of that offence.

- **Spent conviction**

This is where, after a certain amount of time, a conviction for an offence need not be disclosed to employers and cannot be taken into account by, for instance, the courts. The amount of time which must pass before a conviction is treated in this way varies and depends on a number of factors, such as, the nature and seriousness of the offence or the sentence imposed. In any event, once sufficient time has passed the conviction is referred to as 'spent'. **However, under the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979, 'spent' convictions must be disclosed to an employer where the post involves working with children or vulnerable groups.**

- **Bound Over**

If a person is found guilty of an offence in the Magistrate's Court the Magistrate concerned has a number of options. One of those options is to order the guilty party not to commit any more offences within a certain period on the basis that if further offences are committed during that period those further offences will be dealt with more harshly. This is called 'binding over' an offender.

- **Information about informed warnings, cautions and diversionary youth conferences**

Where the Public Prosecution Service [PPS] prosecutor decides that there is enough evidence about an offence to prosecute, and that it is in the public interest to do so, then the PPS must also decide if prosecution at court is the most appropriate way of dealing with the case.

Where the PPS decide not to prosecute at court there are a number of alternative options that can be used with offenders. These are;

- **informed warning** – is a formal reprimand by the police, given where the offender admits the offence. Although it is not a conviction, it is recorded on the person's criminal record for 12 months. This is available for use with both adults and those under 18;
- **caution** – is another type of formal reprimand by the police, given where the offender admits the offence. It is recorded on a person's criminal record for 5 years in the case of an adult or 30 months in the case of a young person; and
- **diversionary youth conference** – a diversion youth conference is for cases when there is no prosecution but the PPS decides that a full conference with

the victim should be offered. A youth conference is a meeting or series of meetings with the young offender, their parents or responsible adult. A diversion youth conference is available for any offence for under 18s when the individual admits guilt and consents to a conference. The diversion plan is not a conviction but is recorded on the young person's criminal record for 30 months.