

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

Part 1: Regulated Activity in relation to children - Activities
<p>The activities in the left-hand column are regulated activity in relation to children, subject to:</p> <ul style="list-style-type: none">• exceptions in the right-hand column;• different provisions for “establishments” (specified places) in Part 2 below. <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">• “new” exceptions are those in the 2012 Act;• “existing” exceptions are already in the 2006 Act or 2007 Order as amended before the 2012 Act, or in secondary legislation under it.

Activity	Exceptions – not Regulated Activity
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 4¹:	
<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(15²)</i>.</p> <p><i>*Sources:</i></p> <ul style="list-style-type: none">- <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>New:</p> <ul style="list-style-type: none">• Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. <i>Para 2(3A)</i> <p>Existing:</p> <ul style="list-style-type: none">▪ Activity relating to a child in the course of his employment, not by a person for whom arrangements exist principally for that purpose.▪ Activity merely incidental to activity with adults.

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

² 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"> See rows (i) to (iii) below re types of care. <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"> Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. <i>Para 2(3B)(b).</i> <p>Existing:</p> <ul style="list-style-type: none"> Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose. Activity merely incidental to activity with adults.
Particular types of care within (b) above, which apply to any child, even if done only once: (i) to (ii) below.	
<p>(i) Relevant personal care. <i>Para 1(1B):</i></p> <p>(a) physical help in connection with eating or drinking, for reasons of illness or disability;</p> <p>(b) physical help for reasons of age, illness, or disability, in connection with:</p> <ul style="list-style-type: none"> (i) toileting (including re menstruation); (ii-iii) washing, bathing, or dressing; <p>(c)-(d) prompting with supervision, in relation to (a)-(b), where the child is otherwise unable to decide;</p> <p>(e)-(f) other training or advice in relation to (a)-(b).</p>	
<p>(ii) Health care. <i>Para 1(1C):</i></p> <p>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"> Health care not by, or directed or supervised by, a health care professional*. <i>Para 2(3B)(a).</i> <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"> Legal advice. <i>Para 2(3C);</i> <p>Existing:</p> <ul style="list-style-type: none"> Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.
<p>(a), (b) & (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"> Activity by a person who does not have access to the content of the matter, or contact with users.
(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 ³ .	

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 ⁴ . *That is: on domestic premises, for reward; as opposed to “childcare premises”, part 2 below.	
(5) Fostering** a child. **Defined at section 53 ⁵ .	Existing: <ul style="list-style-type: none"> Care arranged by family members and not for reward is not regulated activity. <i>Section 53(8)</i>⁶. 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>.

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

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

⁵ In Northern Ireland: Article 55, SVG Order 2007.

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

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

⁷ 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) & (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>In Northern Ireland (under Schedule 2, Para 3(1) of the SVG Order):</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"> ▪ Activity by person contracted (or volunteering) to provide occasional or temporary services (not teaching, training or supervision of children). <i>Para 1(2A) & (2B)(a);</i> ▪ Volunteering, under day to day supervision of another person engaging in regulated activity. <i>Para 1 (2B)(b).</i> <p>Existing:</p> <ul style="list-style-type: none"> ▪ Activity by a person in a group assisting or acting on behalf of, or under direction of another person engaging in regulated activity; ▪ childcare premises which are the home of a parent etc. of at least one child to whom the childcare or child minding is provided; ▪ 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.

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

Regulated Activity (Adults)

This document provides information on the scope of Regulated Activity in relation to adults, as defined in the Safeguarding Vulnerable Groups Act 2006 (SVGA) and as amended by the Protection of Freedoms Act 2012 (PoFA)¹. (The relevant provisions of the SVGA are set out in the accompanying document). This note describes the situation in England and Wales (please note that certain inspection functions and commissioners are additionally within regulated activity in Wales).

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 SVGA 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.²

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.³ 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.⁴**
 - 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.**

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

² The definition of 'vulnerable adults' in section 59 SVGA has been repealed.

³ See amendments to Part 3 of Schedule 4 to the SVGA.

⁴ Section 58 SVGA provides for this; s 58 was not amended by the PoFA.

New definition of regulated activity

There are six categories within the new definition of regulated activity.

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 regulators⁵:
 - General Medical Council
 - General Dental Council
 - General Optical Council
 - General Osteopathic Council
 - General Chiropractic Council
 - General Pharmaceutical 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.⁶
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), is regulated activity. This includes first aid given by Community First Responders.
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.
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.

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

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

6. All staff who work in **community pharmacies and opticians** who are not regulated health care professionals will be excluded from regulated activity.⁷ 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.⁸ 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, would be 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).

⁷ The secondary legislation that will exclude staff in such settings from regulated activity is soon to be laid before Parliament.

⁸ The secondary legislation that will exclude this activity from regulated activity is soon to be laid before Parliament.

4. A health care assistant on a hospital ward who feeds an adult because they are too frail to feed themselves would be 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 a 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, would be 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:

- Lasting power of attorney under the Mental Capacity Act 2005
- Enduring power of attorney under the Mental Capacity Act 2005
- Being appointed as the adult's deputy under the Mental Capacity Act 2005
- Being an Independent Mental Health Advocate
- Being an Independent Mental Capacity Advocate
- Providing independent advocacy services under the National Health Service Act 2006 or National Health Service (Wales) Act 2006
- Receiving payments on behalf of that person under the Social Security Administration Act 1992

is in regulated activity.

Conveying⁹

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

⁹ The secondary legislation that will prescribe when conveying is regulated activity is soon to be laid before Parliament.

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, Ambulance Technicians and Emergency Care 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 also in regulated activity.
3. Conveying does not include licensed taxi drivers or licensed private hire drivers, and does not include 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.¹⁰

¹⁰ See p.1 of this note.