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ADULTS

## AccessNI: What you need to know

Guidance for  
organisations working  
with children and/or  
adults



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## Introduction

Organisations working with vulnerable groups need to apply good safeguarding practice and one important element of this is having robust recruitment and selection procedures. Before recruiting for a post, the job/role description must be drawn up outlining the purpose, scope, responsibilities and tasks required, and it is at this point that the organisation must consider if the post is eligible for an AccessNI check. If there is eligibility the organisation should make this known in their recruitment material as this may prevent unsuitable people from applying. The AccessNI check should be the final stage of the recruitment process, the preferred applicant should be offered the post subject to the result of the check.

This guidance will familiarize organisations with the AccessNI registration process, the types of checks available and the information they disclose, and the definitions of regulated activity (current and former).

## AccessNI

AccessNI is the system for the disclosure of an individual's criminal history to help organisations make safer recruitment decisions. It was established by the Northern Ireland Office as a result of the introduction in Northern Ireland of Part V of the Police Act 1997. Since then AccessNI has moved under the Department of Justice.

## Registration with AccessNI

An organisation can become a 'Registered Body' with AccessNI and process applications for standard and enhanced checks. Registered Bodies must submit over 20 applications a year to maintain their status. To become a Registered Body, an appropriate person, such as a senior staff member within the organisation, must complete an online registration form to create an nidirect account. When they activate the account, they can apply to register the organisation. If approved, this person will then become known as the Lead Signatory and will be the first point of contact for AccessNI. They must be over 18, must never have been removed from the AccessNI register and will be checked for any criminal record. The registration process will cost £195.

Once registered, the Lead Signatory may appoint Counter Signatories (who must also create an nidirect account and register with AccessNI) to assist in applying for checks and receiving disclosure certificates. A charge of £13 will be made for each Counter Signatory application. Counter Signatories must also be aged 18 or over and be checked for any criminal record before they can manage applications. To register visit

<https://www.nidirect.gov.uk/services/apply-online-become-registered-body>

Organisations who are not Registered Bodies can use the services of an organisation which has already registered with AccessNI and can deliver all of the necessary services on their behalf - an Umbrella Body. An Umbrella Body can be open, providing disclosure services to different types of organisations in different regions or closed, providing disclosure services to one sector or in one geographical area. Most Umbrella Bodies charge a fee for provision of the service. For more information visit <https://www.nidirect.gov.uk/articles/accessni-umbrella-bodies> Volunteer Now acts as an Umbrella Body for volunteer involving, non-

statutory and nonprofit making organisations in Northern Ireland. For more information visit <https://www.volunteernow.co.uk/organisations/safeguarding/access-ni-umbrella-body-service/>

## Age of applicants

AccessNI will not accept applications for Basic, Standard or Enhanced checks where the individual is not aged 16 or over on the day the application was submitted. The only exception to this is where the applicant is seeking an Enhanced check and he/she is:

- a member of a family, where an adult in that family is a registered childminder, or is seeking to foster or adopt a child or
- is living or working at the same premises where the childminding, fostering or adoption is to take place.

In such circumstances, applications will continue to be processed provided the applicant is over 10 years of age.

## Types of AccessNI checks and the information disclosed

There are different types of checks available through AccessNI, each returning different levels of information on the disclosure certificate. Individuals can apply directly to AccessNI using the appropriate application form to obtain a Basic check. Standard and Enhanced checks can only be accessed through Registered/Umbrella Bodies.

### Basic check

A basic check discloses all unspent convictions or will state that no convictions were found. Anyone can apply for a basic check. An employer can ask all job applicants to apply for a basic check during the recruitment process.

### Standard check

A standard check discloses spent and unspent convictions, informed warnings, cautions and diversionary youth conferences (all subject to filtering – see page 5). Standard checks are only available where the position or role in question is exempt from the Rehabilitation of Offenders (NI) Order 1978. They are not suitable for roles working with children or adults.

### Enhanced check

An enhanced check discloses spent and unspent convictions, informed warnings, cautions, diversionary youth conferences (all subject to filtering – see below) and information held by the police that is relevant to the role applied for. For positions which are deemed 'regulated activity' (see page 8 - Regulated Activity) the check also discloses information held by the Disclosure and Barring Service.

In order to process any type of check the individual must create an nidirect account. For a basic check the individual then needs to apply to AccessNI for the check themselves. For a Standard or Enhanced Check the individual needs to apply via an AccessNI-registered organisation. The organisation that has asked the individual to get the check must give them

a personal identification number (PIN) before they can apply. The application must be approved by the organisation before being submitted to AccessNI for processing.

For more information visit:

<https://www.nidirect.gov.uk/services/apply-online-basic-check>

<https://www.nidirect.gov.uk/services/apply-online-standard-check-through-registered-body>

<https://www.nidirect.gov.uk/services/apply-online-enhanced-check-through-registered-body>

This table from the Access NI website summarizes the information disclosed:

Level of check	unspent convictions	spent convictions	barred lists	relevant police information	caution
Basic	Yes	No	No	No	No
Standard	Yes	Yes	No	No	Yes
Enhanced	Yes	Yes	Yes	Yes	Yes

For more information on the types of criminal record information visit

<https://www.nidirect.gov.uk/articles/information-disclosed-in-a-criminal-record-check>

## Filtering

Sometimes details of an individual's criminal record will not appear on their disclosure certificate. They are 'filtered' from Standard and Enhanced checks because they are old and/or minor. The individual does not have to tell a prospective employer/organisation about these convictions and/or cautions because they are 'protected'.

Some types of offences will always be disclosed including those which are serious, relate to sexual or violent offending or are relevant in the context of safeguarding. These are known as 'specified offences'. It would never be appropriate to filter such offences regardless of when they took place. The following convictions and/or cautions are not filtered:

- a conviction or caution, diversionary youth conference or informed warning for a specified offence
- a conviction resulting in a custodial sentence (including a suspended sentence)
- a conviction for trying to commit a specified offence
- a conviction for encouraging or helping someone else commit a specified offence

A full list of specified offences can be found here

<https://www.nidirect.gov.uk/publications/accessni-list-specified-offences>

This table from the Access NI website provides information on filtered offences:

Conviction	18 or over at time of conviction	Under 18 at time of conviction
Conviction for single non-specified offence	Filtered after 11 years	Filtered after five and a half years
Cautions for non-specified offences	Filtered after six years	Filtered after two years
Diversionary Youth Conferences	N/A	Filtered after two years
Informed warning for non-specified offence	Filtered after one year	Filtered after one year

For Enhanced Disclosures only, the Police may decide to include information about cautions and/or convictions that have been filtered by AccessNI on the basis that they ‘reasonably believe to be relevant and ought to be disclosed’. If this is applied, the information will appear in the Police information section of the certificate rather than in the convictions section.

As there have been changes made to the Rehabilitation of Offenders legislation to introduce the filtering scheme, organisations can no longer legally ask applicants to declare all convictions, even in cases where an Enhanced Disclosure will be carried out. Organisations may now only ask applicants to declare any convictions that are not subject to filtering. AccessNI have provided the following example of an appropriate pre-employment question which employers may wish to use: *‘Do you have any convictions that are not ‘protected’ (as defined by the Rehabilitation of Offenders (Exceptions) (Northern Ireland) Order 1979, as amended in 2014)?’*

## Making a dispute with AccessNI

An individual can ask the Independent Monitor (IM) to review police information on their Enhanced certificate where they believe it is inaccurate or it is not relevant for the purpose for which the certificate was sought (that is the type of work set out on the application) or it ought not to have been included in the certificate. Applicants are required to complete the new Certificate Dispute Form (CDF). This form can be found at [www.nidirect.gov.uk/accessni-advice-complaints-and-disputes](http://www.nidirect.gov.uk/accessni-advice-complaints-and-disputes).

AccessNI will continue to inform Registered Bodies if an individual has sought such an appeal, but only where the applicant has given permission on their Certificate Dispute Form for AccessNI to do so.

## Costs of AccessNI Checks

AccessNI charges a fee for each criminal record check:

Basic Check	£18
Standard Check	£18
Enhanced Check	£33

## Volunteers

For AccessNI purposes, the definition of a volunteer is set out in legislation as follows;

*“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.”*

Standard and Enhanced checks for volunteers are FREE except where the volunteering is directly for a statutory organisation or where a non-profit organisation is delivering statutory services under contract or in a specific project for which that organisation has received funding from Government which includes provisions covering the costs of Standard and Enhanced Disclosures for volunteers.

### Checking applicants from overseas

AccessNI can access criminal records held overseas, if the applicant is doing regulated work with children and is German; Lithuanian; Portuguese; Spanish; French; Italian; Slovakian; Bulgarian; Hungarian; Latvian; Polish; Romanian; Czech; Greek or Dutch

You can send an application while the individual is overseas. Further information can be found at <https://www.nidirect.gov.uk/articles/checking-job-applicants-employees-and-volunteers>

If you want to employ/involve someone from another country and need a criminal record visit <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>

### Regulated Activity

The Safeguarding Vulnerable Groups (NI) Order 2007, as amended by the Protection of Freedoms Act 2012 defines ‘regulated activity’ with children and adults. Regulated activity is work which a barred person must not undertake. It is a criminal offence for a barred person to seek or undertake regulated activity, and it is an offence for organisations to ‘knowingly employ’ a staff member or involve a volunteer in regulated activity if they are barred.

If a post meets the definition of regulated activity, there is eligibility for an Enhanced Disclosure with Barred List check on the preferred candidate prior to confirming an offer of work/volunteering. If not barred, the organisation must use its discretion regarding any criminal history information which may be contained on the Disclosure certificate.

Regulated activity continues to exclude any activity carried out in the course of family relationships, and personal, non-commercial relationships.

## Definition of regulated activity relating to Children and Young People

From 10 September 2012 regulated activity relating to children includes:

1. Unsupervised activities: teaching, training, instructing, caring for or supervising children, providing advice/guidance on well being, driving a vehicle only for children;
2. Work for a limited range of establishments (specified places) with opportunity for contact with children for example schools, children's homes, childcare premises, children's hospitals. Work undertaken by supervised volunteers in these places is not regulated activity.

Work under 1 or 2 is regulated activity if undertaken regularly. Regular means carried out by the same person frequently (once a week or more) or on four or more days in a 30-day period or overnight.

3. Relevant personal care, for example washing or dressing, or health care by or supervised by a professional (even if carried out once);
4. Registered childminding and foster care.

**Note:** the day to day line manager/supervisor of an individual in regulated activity is also in regulated activity.

See Appendix 1 - Chart 1: Regulated Activity (children) Strand 1

Appendix 2 - Chart 2: Regulated Activity (children) Strand 2

Appendix 3 - Factual Note Regulated Activity in Relation to Children

## Supervised Activity with Children and Young People – A guide to good practice

Contained within the definition of regulated activity with children is the concept of supervision. Posts which are supervised to the level described by Government in the document, "Statutory guidance: Regulated Activity (children) – supervision of activity with children which is regulated activity when unsupervised" (see Appendix 4), are now outside the scope of regulated activity and are therefore ineligible for an Enhanced Disclosure with Barred list check. However, it remains possible to obtain Enhanced Disclosures (without Barred list) checks on supervised posts and other posts which would have been in regulated activity prior to 10 September 2012. It is acknowledged that only a limited number of volunteering posts will be supervised to the level required by the Government guidance.

### 1. How will organisations decide if a post is unsupervised or supervised?

When an organisation decides to supervise a person with the aim that the supervised work will not be regulated activity the law makes three main points:

- there must be supervision by a person who is in regulated activity;
- 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.



## 2. How might the statutory guidance on supervised activity be interpreted?

All organisations must have regard to the statutory guidance and may wish to consider the points below in relation to supervision issues in the voluntary and community sector. The introduction of the term “supervision” is intended to give local managers and supervisors the flexibility to determine what is reasonable and regular for their circumstances. The precise nature and level of supervision will vary from case to case, good practice guidance on the main legal points above include:

- Supervision of the individual is provided by a person in regulated activity in a more senior position than the individual. Peer to peer supervision does not mean the individual is in a formally supervised position.
- Supervision is regular and day to day, i.e. that supervision must take place “on a regular basis”. This 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 rather than the rule. It must take place on an on-going basis, whether the worker has just started or has been doing the activity for some time. It must be consistent and on every occasion the individual is working/volunteering.
- Supervision must be reasonable in all the circumstances for the purposes of safeguarding children and young people. Organisations must consider whether they can implement a consistent level of supervision at all times to ensure that it would not impact on the safety and protection of children and young people in the care of the organisation if a Barred individual was in this “supervised” position.

## 3. Additional notes:

Organisations may also wish to consider the following:

- the ‘supervision’ or monitoring of workers on a day to day basis is in addition to any formal support and supervision processes that are in place as part of the effective management of staff and volunteers. If this is not the case the post does not meet the supervision exemption and must be treated as a regulated activity;
- supervision is constant during all activities;
- the location of the activity can facilitate robust supervision of the worker (for example one senior worker responsible for 4 youth workers in separate rooms in a community centre would not constitute constant supervision therefore the 4 workers and the senior youth worker would all be in regulated activity);
- the level of supervision in place adequately protects children in the event of unforeseen or unexpected events;
- good safeguarding practice is observed. This is essential, regardless of the information obtained through a pre-employment vetting check. Organisations should ensure that they have a safeguarding children and young people policy which meets the minimum standards of good practice in ‘Keeping Children Safe: Our Duty to Care’ (as endorsed by DOH) available at [www.volunteernow.co.uk](http://www.volunteernow.co.uk), and are maintaining the highest level of policy implementation.

## Definition of regulated activity relating to Adults

The definition of regulated activity for adults no longer labels adults as 'vulnerable'. Instead the definition identifies the activities that, if an adult needs them, lead to that adult being considered vulnerable at that particular time. This means that the focus is on the activity or service required by the adult - not the setting in which the activity or service is received.

There are six categories of workers who fall into the definition of regulated activity relating to adults. Those who provide:

### 1. Health care

Regulated health care professionals or those acting under the direction or supervision of a health care professional, for example, doctors, nurses, health care assistants, physiotherapists.

### 2. Personal care

Assistance with washing, dressing, eating, drinking and toileting, or teaching someone to do one of these tasks.

### 3. Social work

Provision of social work by a social care worker which is required in connection with any health services or social services.

### 4. Assistance with general household matters

Includes helping a person with their cash, paying bills or carrying out shopping on their behalf because of their age, illness or disability.

### 5. Assistance in the conduct of a person's own affairs

Including enduring power of attorney, or deputies appointed under the Mental Health Order (NI) or Social Security Administration (NI) Act 1992.

### 6. Conveying

Conveying adults because of age, illness or disability to, from or between places where they received healthcare, personal care or social work.

There is no requirement for a person to do any of the identified activities a certain number of times before they are engaging in regulated activity.

**Note:** the day to day line manager/supervisor of an individual in regulated activity is also in regulated activity.

See Appendix 6 – Factual Note Regulated Activity in Relation to Adults

## Examples to consider:

**After Schools Assistants** will work closely with other staff and volunteers to provide a fun environment for children from the local community to interact and play. They will help with setting out games, playing with and supervising the children. The commitment is one afternoon per week.

This role is unlikely to meet the definition of regulated activity if the volunteer is supervised during each session by a more senior worker who is in regulated activity and both the worker and volunteer are always in the same room.

**Community Support Volunteers** will help children with learning disabilities to get involved in their local community. The role may include sharing a hobby or interest, learning a new skill, shopping, going to the cinema, enjoying sports or chatting over a coffee. The role will be undertaken once a week.

This role is likely to meet the definition of regulated activity as the volunteer is caring for or supervising a child (under 18 years), it is unsupervised activity and is undertaken regularly.

**Youth Volunteers** will give very valuable support each week to youth workers in the provision of educational and fun activities for children in a local Junior Youth Club. Volunteers will also be helping with outings and special events.

This role is unlikely to meet the definition of regulated activity if the volunteer is supervised during each session by a more senior youth worker who is in regulated activity and both the worker and volunteer are always in the same room.

**Volunteer Drivers** collect older adults from their homes and take them to/from social groups and events including craft clubs, bingo and the local lunch club.

This role is not regulated activity as the driver is not taking the adult to access health and/or social care services.

**Volunteer Befrienders** will be visiting isolated adults in their homes to provide company once a week, to reduce loneliness. As well as chatting the befriender will participate in activities of the person's choice e.g. playing cards, playing board games, reading etc. Some of the adults are older and some have experienced poor mental health. The befriender will provide the adult with information about local services and groups, to help them connect with their community.

This role is not regulated activity.

Further examples are included in the Factual Notes within the Appendices.

## Former definition of regulated activity relating to CHILDREN AND 'VULNERABLE ADULTS' (pre 2012)

Posts which are outside the scope of the current definition of regulated activity, but which involve a significant degree of contact with vulnerable groups and meet the former definition are eligible for an Enhanced Check without Barred list information.

Former regulated activity for children and ‘vulnerable adults’ includes:

1. Undertaking activity, which is of a specified nature, which includes teaching, training, instructing, caring for, supervising, providing advice or guidance, providing treatment or therapy, transport, moderating a chat room;
2. Regulated activity is activity which takes place in a specified place, and there is the opportunity for contact with a vulnerable person;
3. Certain defined positions of responsibility for example a school governor, director of social services, trustees of certain charities;
4. Fostering, childminding and day care provision;
5. Manager/supervisor of worker in regulated activity.

The activity must take place on a frequent (once per week or more) or intensive (four or more days in any 30 day period or overnight) basis.

A vulnerable adult is defined in Article 3 of the SVG Order as someone who has attained the age of 18 and

- is in residential accommodation;
- receives domiciliary care;
- receives any form of health care (treatment, therapy, palliative care);
- is detained in lawful custody;
- is under the supervision of a probation officer;
- receives a prescribed welfare service (supporting people);
- receives service/takes part in activity provided to specified persons (with any form of disability, age-specific needs, prescribed physical or mental health problem);
- is a Direct Payments recipient;
- requires assistance in the conduct of his own affairs.

## The Disclosure and Barring Service

The Disclosure and Barring Service (DBS) is responsible for maintaining the list of individuals barred from engaging in regulated activity with children and/or adults across England, Wales and Northern Ireland. Organisations who have permanently removed an individual from regulated activity (or would have done had the employee/volunteer not left) because of harm or risk of harm to vulnerable groups must refer this individual to the DBS who will consider whether the person should be placed on a Barred list. More information on the DBS referral criteria and process is available here: <https://www.gov.uk/government/collections/dbs-referrals-guidance--2#barring-and-referral-guidance->

## Further Information:

Access NI <https://www.nidirect.gov.uk/information-and-services/accessni-criminal-record-checks/apply-accessni-check>

Disclosure and Barring Service (DBS)

<https://www.gov.uk/government/organisations/disclosure-and-barring-service>

Keeping Children Safe: Our Duty to Care and accompanying Resource Pack

[https://www.volunteernow.co.uk/publication/?search=KEEPING+CHILDREN+SAFE+OUR+DUTY+TO+CARE&p\\_category=](https://www.volunteernow.co.uk/publication/?search=KEEPING+CHILDREN+SAFE+OUR+DUTY+TO+CARE&p_category=)

Keeping Adults Safe: A Shared Responsibility and accompanying Resource Pack

[https://www.volunteernow.co.uk/publication/?search=keeping+adults+safe+a+shared+responsibility+&p\\_category=](https://www.volunteernow.co.uk/publication/?search=keeping+adults+safe+a+shared+responsibility+&p_category=)

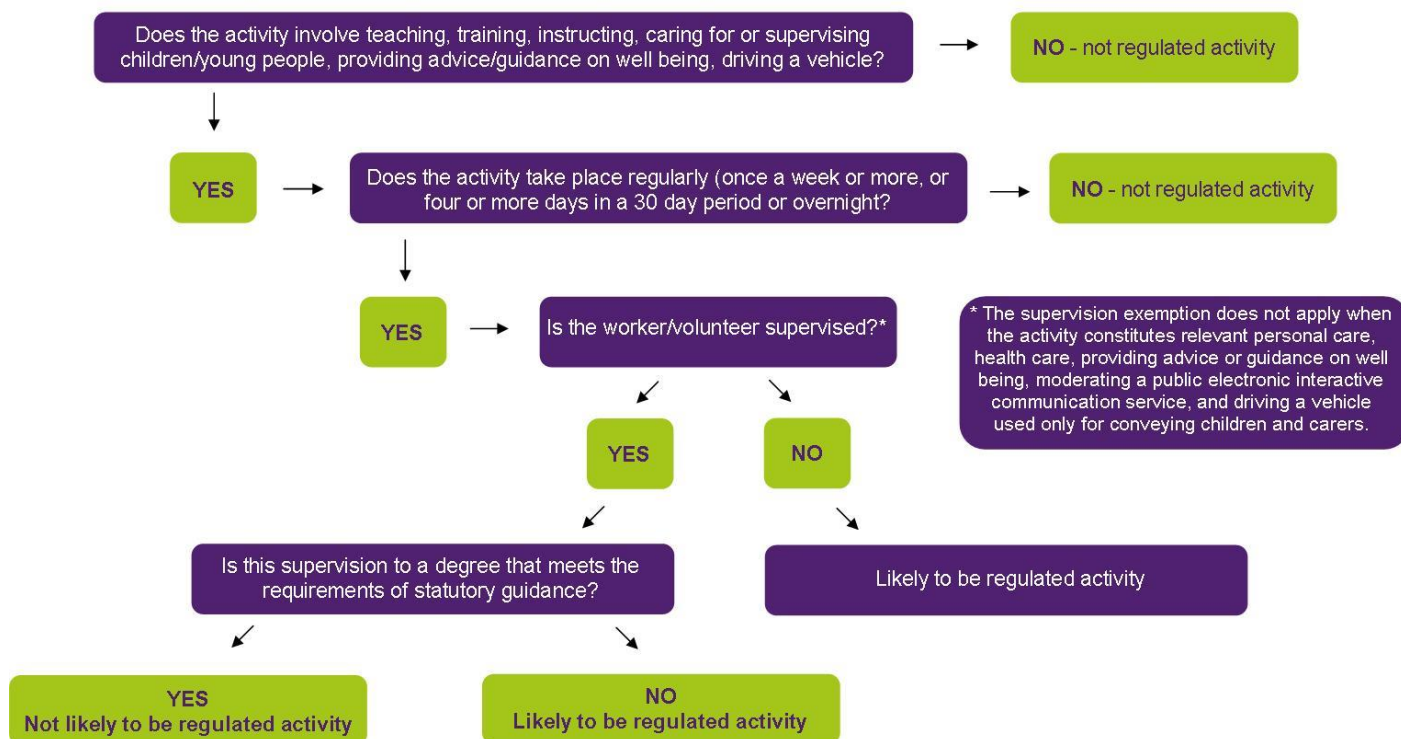
## Appendices

- Appendix 1 – Chart 1: Regulated Activity (children) Strand 1
- Appendix 2 – Chart 2: Regulated Activity (children) Strand 2
- Appendix 3 - Factual Note Regulated Activity in Relation to Children
- Appendix 4 - Statutory Guidance - Supervision
- Appendix 5 - Chart 3: Regulated Activity relating to Adults
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## Appendix 1: Chart 1 - Regulated Activity (children) Strand 1

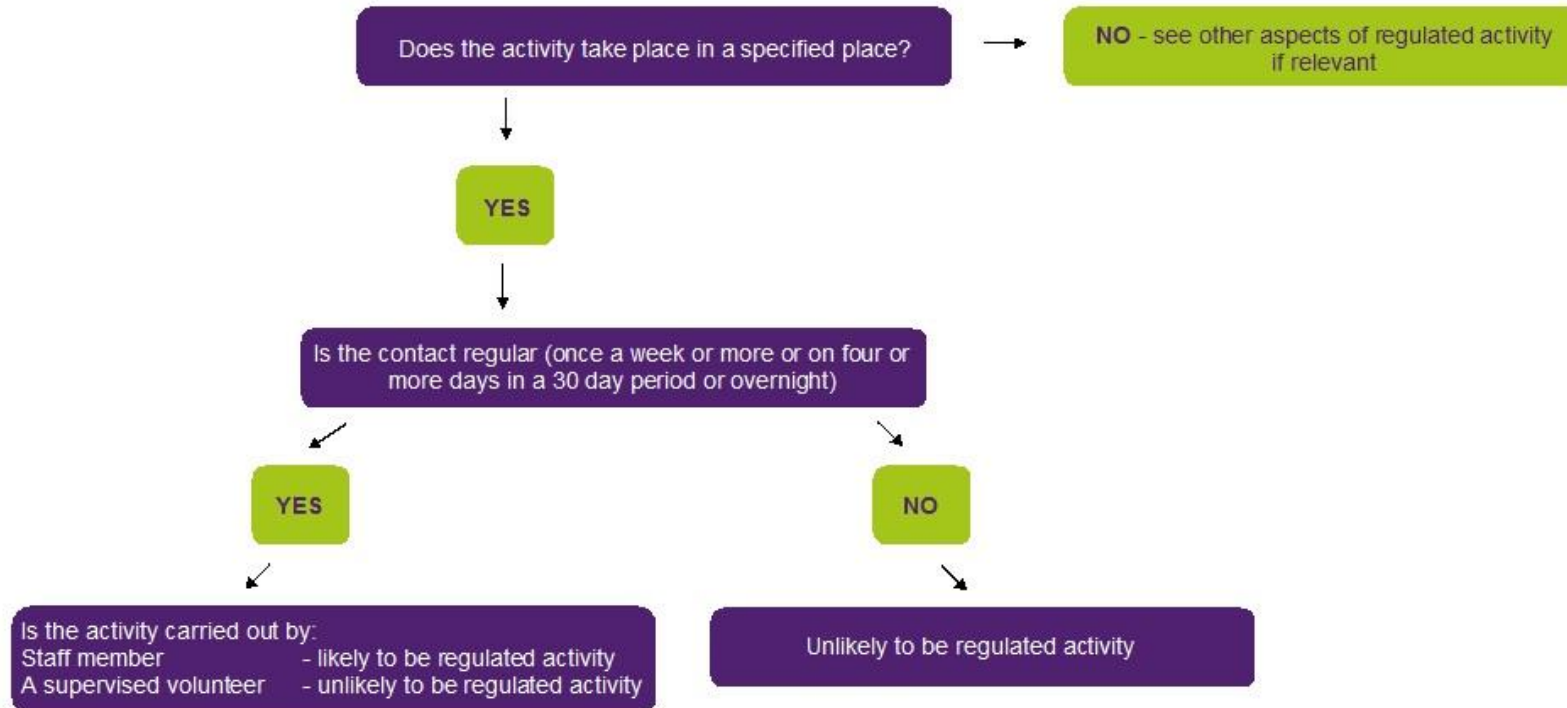
### Regulated Activity (children) Some questions to consider

**Strand 1: Unsupervised activities: teaching, training, instructing, caring for or supervising children, or providing advice/guidance on well-being, or driving a vehicle only for children.**



## Appendix 2: Chart 2 – Regulated Activity (children) Strand 2

**Strand 2:** Work for a limited range of establishments ('specified places'), with opportunity for contact: e.g. schools, children's homes, childcare premises, a children's hospital but not work by supervised volunteers in those places.



## Appendix 3: Factual Note Regulated Activity in Relation to Children

### **Regulated Activity in Relation to Children: Scope**

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**

The activities in the left-hand column are regulated activity in relation to children, subject to:

- exceptions in the right-hand column;
- different provisions for “establishments” (specified places) in Part 2 below.

Do not read the left-hand column in isolation from the right-hand column or from Part 2.

In the right-hand column:

- “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 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><i>*Sources:</i>                      - <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>

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:  (i) toileting (including re menstruation);  (ii-iii) washing, bathing, or dressing;  (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 wellbeing 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</li> </ul>

	arrangements exist principally for that purpose.
(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>	

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.  *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(*)</i><sup>6</sup>.</li> </ul> <p>Local Authority can foster child with barred person who is, or lives with, a relative of the child. SI 2009-1797, Art 3(2).</p>

<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)***: 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>***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>	

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 day 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);            (aa) pupil referral units (also known as Short Stay Schools) not falling within the above;            (b) nursery schools;            (d) institutions for the detention of children;            (e) &amp; (f) children’s homes;            (fa) children’s centres in England;            (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);            (b) nursery schools;            (bb) Alternative Education Provision;            (c) a children’s hospital;            (d) institutions for the detention of children;            (e) children’s homes;            (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). Para 1(2A) &amp; (2B)(a);</li> <li>• Volunteering, under day to day supervision of another person engaging in regulated activity. Para 1 (2B)(b).</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.*

## Appendix 4: Statutory guidance – Supervision

1. This document fulfils the duty in legislation\* \*\* 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\*\*\*
- 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\*\*\*\* 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\*\*\*\*\*.

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

\*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.

\*\*Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, Schedule 2, paragraph 5A, is as above on guidance on “supervision” for Northern Ireland.

\*\*\*If the work is in a specified place such as a school, paid workers remain in regulated activity even if supervised.

\*\*\*\* 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.

\*\*\*\*\*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.

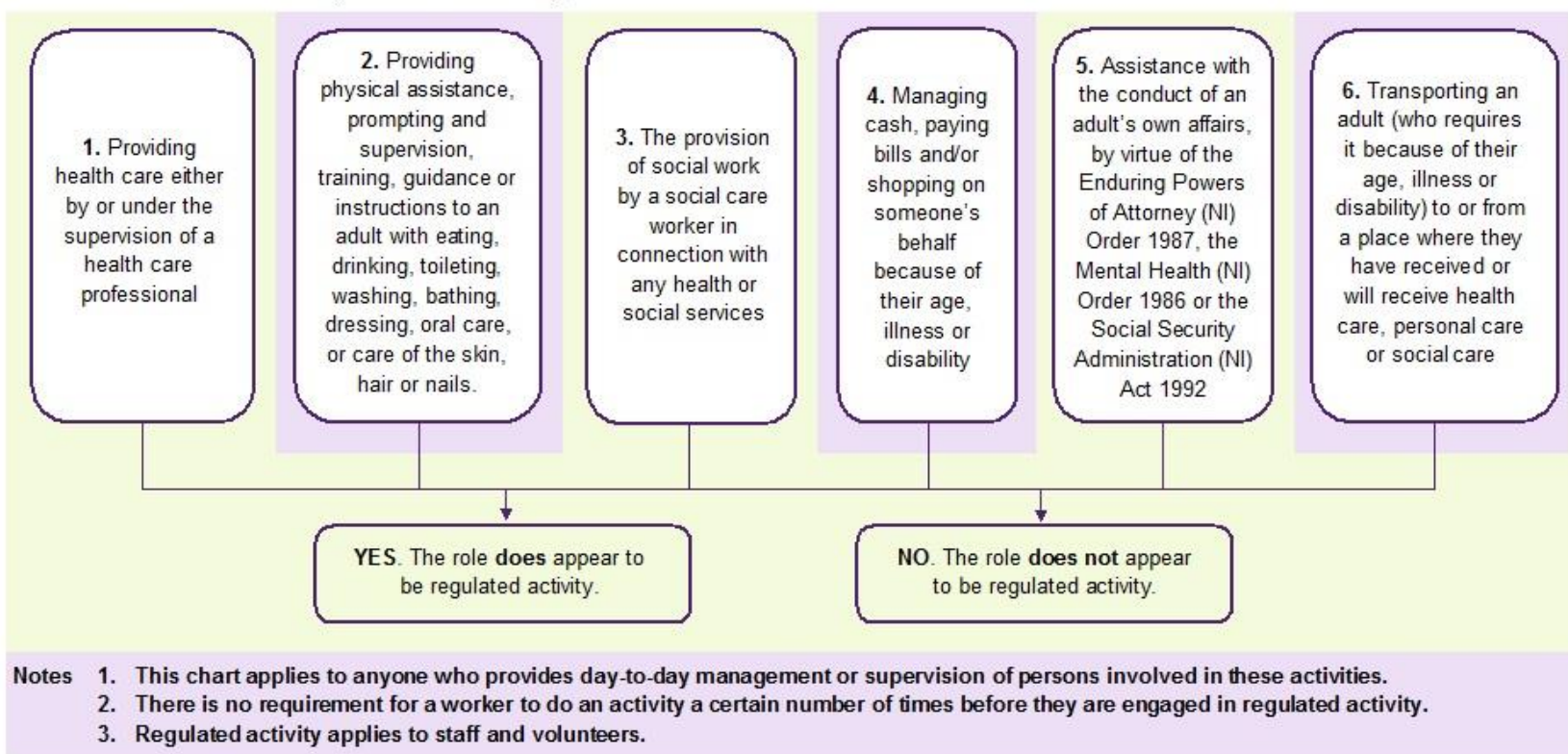


## Appendix 5: Chart 3 – Regulated Activity relating to adults

### Regulated Activity relating to adults

**Important** - this chart does not apply to family and personal arrangements which are outside the scope of regulated activity and it should be read in conjunction with the full guidance from the Department of Health, Social Services and Public Safety [www.dhsspsni.gov.uk/svg](http://www.dhsspsni.gov.uk/svg).

#### Does the role involve any of the following activities?



*Adapted from Volunteering England, Disclosure and Barring Checks*

## Appendix 6: Factual Note Regulated Activity in Relation to Adults

The definition of 'regulated activity' (adults) as defined by the Safeguarding Vulnerable Groups Order 2007 from 10th 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.

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<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

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.

## 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>

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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.

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.

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