

## **Regulated activity (adults)**

*The definition of 'regulated activity' (adults) as defined by the Safeguarding Vulnerable Groups Act 2006 from 10<sup>th</sup> September 2012*

## Regulated activity (adults)

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First published [Month Year]

Published to DH website, in electronic PDF format only.

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# Regulated activity (adults)

*The definition of ‘regulated activity’ (adults) as defined by the Safeguarding Vulnerable Groups Act 2006 from 10<sup>th</sup> September 2012*

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# Factual Note

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)<sup>1</sup>. 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.<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.**

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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 section 59 SVGA has been repealed.

<sup>3</sup> See amendments to Part 3 of Schedule 4 to the SVGA.

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

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## 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 any of the following professional regulators<sup>5</sup>:
    - 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.<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), 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.

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<sup>5</sup> This list is current at the date of publication of this document. The regulators are those mentioned in s 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (as amended).

<sup>6</sup> The Safeguarding Vulnerable Groups (Miscellaneous Provisions) Regulations 2012 (SI 2012/2112) came into force on 10 September 2012, <http://www.legislation.gov.uk/ukxi/2012/2112/contents/made>

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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.<sup>7</sup> 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.<sup>8</sup> 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 (for example, because 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.

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<sup>7</sup> The Safeguarding Vulnerable Groups (Miscellaneous Provisions) Order 2012 (SI 2012/2113) came into force on 10 September 2012, <http://www.legislation.gov.uk/ukxi/2012/2113/contents/made>

<sup>8</sup> The Safeguarding Vulnerable Groups (Miscellaneous Provisions) Order 2012 (SI 2012/2113) came into force on 10 September 2012, <http://www.legislation.gov.uk/ukxi/2012/2113/contents/made>

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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 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 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 within the meaning of 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



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- 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.

## Conveying<sup>9</sup>

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 on behalf of an organisation and for the purpose of enabling the adult to receive services. The meaning of 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.<sup>10</sup>

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<sup>9</sup> The Safeguarding Vulnerable Groups (Miscellaneous Provisions) Regulations 2012 (SI 2012/2112) came into force on 10 September 2012, <http://www.legislation.gov.uk/uksi/2012/2112/contents/made>

<sup>10</sup> See p.1 of this note.

# Extract from the Safeguarding Vulnerable Groups Act 2006 (as amended)

**These pages were prepared on 31 July 2012 for training purposes only. They should not be relied on as an authoritative version of these statutory provisions.**

## **Safeguarding Vulnerable Groups Act 2006**

(as amended by the Protection of Freedoms Act 2012<sup>11</sup>. The provisions are intended to commence on 10 September 2012.)

### **Extracts from Schedule 4 REGULATED ACTIVITY**

#### **Part 2 REGULATED ACTIVITY RELATING TO VULNERABLE ADULTS**

**7**

- (1) Each of the following is a regulated activity relating to vulnerable adults—
  - (a) the provision to an adult of health care by, or under the direction or supervision of, a health care professional,
  - (b) the provision to an adult of relevant personal care,
  - (c) the provision by a social care worker of relevant social work to an adult who is a client or potential client,
  - (d) the provision of assistance in relation to general household matters to an adult who is in need of it by reason of age, illness or disability,
  - (e) any relevant assistance in the conduct of an adult's own affairs,
  - (f) the conveying by persons of a prescribed description in such

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<sup>11</sup> <http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted>

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- circumstances as may be prescribed of adults who need to be conveyed by reason of age, illness or disability,
- (g) such activities—
- (i) involving, or connected with, the provision of health care or relevant personal care to adults, and
  - (ii) not falling within any of the above paragraphs, as are of a prescribed description.
- (2) Health care includes all forms of health care provided for individuals, whether relating to physical or mental health and also includes palliative care and procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.
- (3) A health care professional is a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act.
- (3A) Any reference in this Part of this Schedule to health care provided by, or under the direction or supervision of, a health care professional includes a reference to first aid provided to an adult by any person acting on behalf of an organisation established for the purpose of providing first aid.
- (3B) Relevant personal care means—
- (a) physical assistance, given to a person who is in need of it by reason of age, illness or disability, in connection with—
    - (i) eating or drinking (including the administration of parenteral nutrition),
    - (ii) toileting (including in relation to the process of menstruation),
    - (iii) washing or bathing,
    - (iv) dressing,

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- (v) oral care, or
    - (vi) the care of skin, hair or nails,
  - (b) the prompting, together with supervision, of a person who is in need of it by reason of age, illness or disability in relation to the performance of any of the activities listed in paragraph (a) where the person is unable to make a decision in relation to performing such an activity without such prompting and supervision, or
  - (c) any form of training, instruction, advice or guidance which—
    - (i) relates to the performance of any of the activities listed in paragraph (a),
    - (ii) is given to a person who is in need of it by reason of age, illness or disability, and
    - (iii) does not fall within paragraph (b).
- (3C) Relevant social work has the meaning given by section 55(4) of the Care Standards Act 2000 and social care worker means a person who is a social care worker by virtue of section 55(2)(a) of that Act.
- (3D) Assistance in relation to general household matters is day to day assistance in relation to the running of the household of the person concerned where the assistance is the carrying out of one or more of the following activities on behalf of that person—
- (a) managing the person's cash,
  - (b) paying the person's bills,
  - (c) shopping.
- (3E) Relevant assistance in the conduct of a person's own affairs is anything done on behalf of the person by virtue of—
- (a) a lasting power of attorney created in respect of the person in

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- accordance with section 9 of the Mental Capacity Act 2005,
  - (b) an enduring power of attorney (within the meaning of Schedule 4 to that Act) in respect of the person which is—
    - (i) registered in accordance with that Schedule, or
    - (ii) the subject of an application to be so registered,
  - (c) an order made under section 16 of that Act by the Court of Protection in relation to the making of decisions on the person's behalf,
  - (d) the appointment of an independent mental health advocate or (as the case may be) an independent mental capacity advocate in respect of the person in pursuance of arrangements under section 130A of the Mental Health Act 1983 or section 35 of the Mental Capacity Act 2005,
  - (e) the provision of independent advocacy services (within the meaning of section 248 of the National Health Service Act 2006 or section 187 of the National Health Service (Wales) Act 2006) in respect of the person, or
  - (f) the appointment of a representative to receive payments on behalf of the person in pursuance of regulations made under the Social Security Administration Act 1992.
- (5) Any activity which consists in or involves on a regular basis the day to day management or supervision of a person carrying out an activity mentioned in sub-paragraph (1) is a regulated activity relating to vulnerable adults.
- (6) The exercise of an inspection function of the Welsh Ministers so far as the function gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in the exercise of that function, to have contact with vulnerable adults, is a regulated activity relating to vulnerable adults.
- (7) An inspection function is a function relating to the inspection of—
  - (a) a local authority (within the meaning of section 1 of the Local Authority Social Services Act 1970 (c 42)) in the exercise of its social services functions (within the meaning of that Act),
  - (b) an establishment in relation to which a requirement to register arises under section 11 of the Care Standards Act 2000,
  - (c) an agency in relation to which such a requirement arises,

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- (d) a person to whom Part 2 of that Act applies in pursuance of regulations under section 42 of that Act,
- (e) an NHS body within the meaning of section 148 of the Health and Social Care (Community Health and Standards) Act 2003, or
- (f) any person, other than a local authority, providing Welsh local authority social services within the meaning of that section,

in so far as the inspection relates to social services, care, treatment or therapy provided for vulnerable adults by the establishment, agency, person or body.

- (8) In sub-paragraph (7)(e) the reference to an NHS body includes a reference to any person who provides, or is to provide, health care for the body (wherever the health care is or is to be provided).
- (9) The exercise of a function of the Commissioner for older people in Wales or the deputy Commissioner for older people in Wales is a regulated activity relating to vulnerable adults.
- (10) A person who is part of a group in relation to which another (P) engages in regulated activity relating to vulnerable adults does not engage in regulated activity only because he assists P or does anything on behalf of or under the direction of P which, but for this sub-paragraph, would amount to engaging in regulated activity relating to vulnerable adults.

## 9

The Secretary of State may, by order, provide that in such circumstances as are specified an activity which is a regulated activity in relation to vulnerable adults is not to be treated as a regulated activity.