

Disclosure and Barring in Northern Ireland— Working with Adults

Context

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 work from which they are barred, and it is an offence for organisations to 'knowingly employ' a staff member or involve a volunteer in regulated activity if they are barred.

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.

Implications

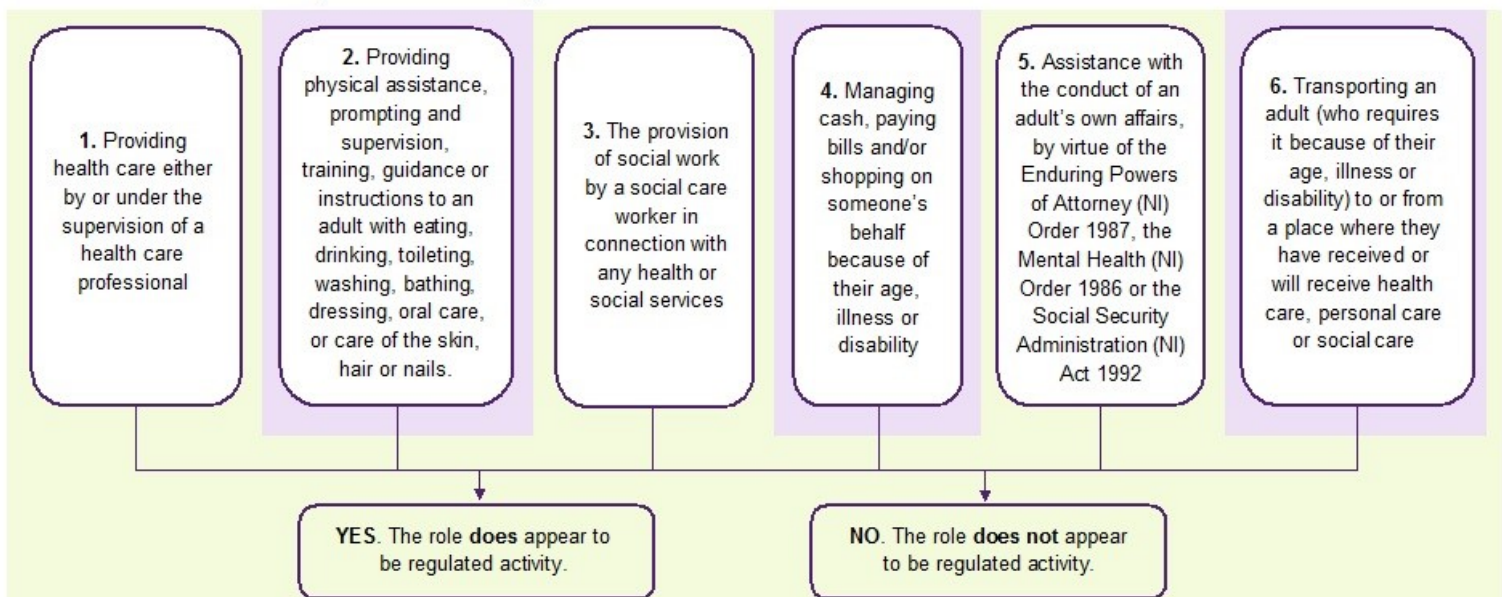
If a post meets the definition of regulated activity, organisations must request an Enhanced Disclosure **with** Barred List check through AccessNI on the preferred candidate prior to confirming an offer of work/volunteering. If not Barred, the organisation will use its discretion regarding any criminal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

The following chart will help you decide if the post working with adults is regulated activity.

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.

Does the role involve any of the following activities?



- Notes**
1. This chart applies to anyone who provides day-to-day management or supervision of persons involved in these activities.
 2. There is no requirement for a worker to do an activity a certain number of times before they are engaged in regulated activity.
 3. Regulated activity applies to staff and volunteers.

Adapted from Volunteering England, Disclosure and Barring Checks

For full details of the scope of regulated activity in relation to adults please see factual note from HM government at **Appendix 1**.

See also **Disclosure and Barring in Northern Ireland - Working with Children and Young People**.

Non regulated activity

For posts which are outside the scope of regulated activity but would have met the definition pre September 2012, organisations may request an Enhanced Disclosure **without** Barred List check on the preferred candidate prior to confirming a conditional offer of work/volunteering. This check should be requested through AccessNI and organisations should use discretion relating to the content of the Disclosure certificate.

For more information on Disclosure and Barring in Northern Ireland, download the 'Changes to Disclosure and Barring: What You Need to Know' leaflet www.official-documents.gov.uk.

Useful links and contacts:

Department of Health, Social Services and Public Safety

www.dhsspsni.gov.uk

Disclosure and Barring Service

www.gov.uk/government/organisations/disclosure-and-barring-service

AccessNI

www.nidirect.gov.uk/accessni

Volunteer Now

www.volunteernow.co.uk

info@volunteernow.co.uk

Appendix 1

Regulated Activity (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)¹. 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.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.

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

² The definition of 'vulnerable adults' in Article 3 SVGO has been repealed.

³ See amendments to Part 3 of Schedule 2 to the SVGO.

⁴ 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:⁵

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.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), it is regulated activity. This includes first aid given by First Responders⁷

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.

⁷ 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.⁸

8 See p.1 of this note

Reasonable precautions have been taken to ensure information in this publication is accurate. However, it is not intended to be legally comprehensive; it is designed to provide guidance in good faith without accepting liability. If relevant, we therefore recommend you take appropriate professional advice before taking any action on the matters covered herein.

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