

# Site Issues

## Eligibility 'Vulnerable' Adults - Job roles - Housing

As you will see below, it is far more stringent than a 'blanket' approach and defines what counselling is etc, who can be a counsellor but nowhere does it state HOUSING personnel.

Most roles in Housing are ensuring rent is paid, benefits agreed, quarterly meetings, compiling reports, ensuring residents are well behaved and comply with all their obligations. I cannot see, in most cases, where, as an example, a Housing officer would be washing, feeding, providing medical care, and so on, to any resident. There must be a professional 'carer' (or whatever the job role is) specifically employed to carry out such duties. I appreciate they need to work with other agencies but it is not their specific job role.

Unless the housing officer 'professionally' performs such duties, such as a nurse or carer for medicines and a solicitor or attorney for financial advice, than I cannot see how an Enhanced DBS check is lawful.

If an adult is simply an adult in a house paying rent, there is no 'risk' under current legislation and, if incidental contact with a 'vulnerable' adult occurs, than that is not covered either for a DBS Disclosure. It just so happens they are in the house but it is not the legislative role of the housing officer to perform any duty within a regulated activity.

Collecting rent and advising on benefits for a 'normal' adult, as you can see below, is not covered.

You can only have a DBS Disclosure if it is an eligible role either under current legislation or any work which was defined as regulated activity relating to vulnerable adults within the meaning of Schedule 4 Part 2 of the Safeguarding Vulnerable Groups Act before the coming into force of sections 65 and 66 of the Protection of Freedoms Act 2012 on 10th September 2012.

### DETAILS:-

With effect from the 10th September, 2012, The Protection of Freedoms Act 2012 brought in significant changes to the (CRB) process:-

- the definition of “regulated activity” has been significantly scaled back to focus on work which involves close and unsupervised contact with vulnerable groups including children;
- activities and work which are being taken out of “regulated activity” will still be eligible for Enhanced (CRB) checks but not checks against the barred lists; and
- persons will no longer be able to apply for (CRB) checks on people under the age of 16.

The Pre-September 2012 Regulated Activity is defined in Schedule 4 (Parts 1 & 2) of

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the Safeguarding Vulnerable

Groups Act 2006. It involves contact with children or vulnerable adults where because of their role, the person

undertaking the activity may develop a relationship of trust with the child or vulnerable adult. It includes:

Activity of a specified nature – this includes advice, guidance, assistance, health or social care, supervision, or treatment or therapy;

OR

Any activity in a specified place – N.B specified place is clearly defined in the legislation. In the context of health

research, examples of specified places, where any type of activity could qualify as regulated activity if there is the

opportunity for contact with children or vulnerable adults; are children's hospitals, adult care home, or schools.

AND INVOLVES Frequent contact (once a month or more), OR Intensive contact (4 days or more in any 30 day period)

OR; overnight contact (between 2am – 6 am). Regulated activity also includes Fostering and 'Defined Office Holders'.

## **Regulated activity (adults)**

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

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

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

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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.**

## **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>:

<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/uksi/2012/2112/contents/made>

General Medical Council

General Dental Council

General Optical Council

General Osteopathic Council

General Chiropractic Council

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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.

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

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

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

6. All staff who work in **community pharmacies and opticians** who are not

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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.

<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/uksi/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/uksi/2012/2113/contents/made>

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

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are 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 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:

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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**

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.

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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).

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

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

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

(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,



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(e) any relevant assistance in the conduct of an adult's own affairs,

(f) the conveying by persons of a prescribed description in such Regulated activity (adults) 11

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

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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, Regulated activity (adults) 12

(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

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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 Regulated activity (adults)

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

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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, Regulated activity (adults) 14

(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

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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.

Unique solution ID: #1050

Author: Jackie Thompson

Last update: 2014-03-11 13:55