# APPENDIX A: POSTS REQUIRING AN ENHANCED CHECK FOR REGULATED ACTIVITY (CURRENT DEFINITION)

## LEGISLATION ON DEFINITION OF REGULATED ACTIVITY

The full, legal definition of regulated activity is set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, as amended (in particular, by the Protection of Freedoms Act 2012). Regulated activity still excludes family arrangements, and personal, non-commercial arrangements.

**What is meant by working regularly?**

The key test is ‘frequent’ or ‘intensive’ contact which was clarified in December 2009 by Sir Roger Singleton and the Secretary of State for Children, Schools and Families as:

“The frequent contact test should be met if the work with children takes place once a week of more. The intensive contact test should be met if the work takes place on four days in one month or more or overnight. Individuals who go into different schools or similar settings to work with different groups of children should not be required to register unless their contact with the same children is frequent or intensive.”

### Regulated Activity (Children) - Current Definition of Regulated Activity - Children

The current definition of regulated activity relating to children comprises only:

1. Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/guidance on well-being, or drive a vehicle only for children.
2. Work for a limited range of establishments (‘specified places’ – see list below), with opportunity for contact, (but not work by supervised volunteers).

Work under 1 or 2 above is regulated activity only if done regularly. Regular means 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 in some cases, overnight). Statutory guidance about supervision of activity – currently out for consultation.

* Relevant personal care, for example washing or dressing; or health care by or supervised by a professional, even if done once;
* Registered childminding; and foster-carers;

Regulated activity still excludes:

* Family arrangements;
* Personal, non-commercial arrangements.

### Definition of Supervision

Supervision must be:

* Regular.
* Day to day.
* Reasonable in all the circumstances for the purpose of protecting the children concerned.
* Carried out by someone who is engaging in regulated activity relating to children.

### Specified Places

* Schools and colleges wholly or mainly for under 18 year olds (all or mainly full-time, for children).
* Pupil referral units (also known as Short Stay Schools) not falling within the above.
* Nursery schools.
* Institutions for the detention of children.
* Children's homes.
* Children's centres in England.
* Childcare premises (including nurseries).

No longer in regulated activity - children

### Activities

* Activity supervised at reasonable level.
* Health care not by (or directed or supervised by) a health care professional.
* Legal advice.
* “Treatment/therapy” (instead “health care”).

### Establishments

* Occasional or temporary services, e.g. maintenance (not teaching etc.).
* Volunteers supervised at reasonable level.

Office holders (England):

* All “positions” removed, e.g. governors, councillors.
* Inspectorates removed.

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| **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 as amended before the 2012 Act, or in secondary legislation under it.

Changes to Legislation: There are outstanding changes not yet made to the Safeguarding Vulnerable Groups Act 2006, but which are in force. |
| **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: of the Safeguarding Vulnerable Groups Act 2006 |
| (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\*. Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised.\*Sources:- once a week: guidance, March 2010, Annex B, page 70 para B.12;- four or more days/ overnight: Schedule 4, para 10(1) as amended.  | New: * Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. Para 2(3A).

Existing: * Activity relating to a child in the course of his employment, not by a person for whom arrangements exist principally for that purpose.
* Activity merely incidental to activity with adults.
 |
| (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.Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised. | New: * Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. Para 2(3B)(b).

Existing:* Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.
* Activity merely incidental to activity with adults.
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| Particular types of care within (b) above, which apply to any child, even if done only once: (i) to (ii) below. |
| (i) Relevant personal care. Para 1(1B):(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). |  |
| (ii) Health care. Para 1 (1C):All forms of health care relating to physical or mental health including palliative care and procedures similar to medical or surgical care. | New: * Health care not by, or directed or supervised by, a health care professional\*. Para 2(3B)(a).
* \*Defined by reference to regulatory bodies. Para 1(1*C)*.
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| (c) Advice or guidance provided wholly or mainly for children relating to their physical, emotional or educational well-being if carried out by the same person frequently (once a week or more often), or on 4 or more days in a 30-day period or overnight. | New: * Legal advice. Para 2(3C);

Existing: * Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.
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| (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. Schedule4, Para 10(2). |  |
| 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: * Activity by a person who does not have access to the content of the matter, or contact with users.
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| (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 |  |
| 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. | Existing: * Care arranged by family members and not for reward is not regulated activity. Section 53(8).
* Local Authority can foster child with barred person who is, or lives with, a relative of the child. *SI 2009-1797, Art 3(2)*.
 |
| (14) 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: – at (a) to (f) above; or – in establishments in part 2 below |  |

**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.

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| **Establishment**  | **Exceptions – not Regulated Activity**  |
| Schedule 4, para 3(1) of the Safeguarding Vulnerable Groups Act 2006 |
| 1. schools (all or mainly full-time, for children);

(aa) pupil referral units (also known as Short Stay Schools) not falling within the above; 1. nursery schools;
2. institutions for the detention of children;
3. & (f) children’s homes;

(fa) children’s centres in England; 1. childcare premises (including nurseries).

Day to day management or supervision on a regular basis of a volunteer activity which would be regulated if unsupervised*. Para 1(15).*  | New: * Activity by person contracted (or volunteering) to provide occasional or temporary services (not teaching, training or supervision of children). *Para 1(2A) & (2B)(a);*
* Volunteering, under day to day supervision of another person engaging in regulated activity. *Para 1 (2B)(b).*

Existing: * Activity by a person in a group assisting or acting on behalf of, or under direction of another person engaging in regulated activity;
* childcare premises which are the home of a parent etc. of at least one child to whom the childcare or child minding is provided;
* for activity undertaken regularly in a number of different establishments, but only infrequently in each: each establishment is only arranging the activity infrequently, so each establishment is not a regulated activity provider in relation to that activity.
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Note: Categories for office holders (“Positions” - Para 1(9) and Para 4) and for Inspectorates in England (sub-paragraphs of Para 1) are removed.

### Regulated Activity (Adults)

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.

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.
2. 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.
3. 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.
4. An adult is a person aged 18 years or over.
5. 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.

### Current definition of regulated activity Adults

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

1. **Providing Healthcare**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 health care professional is a person who is regulated by one of the following professional regulators:
* 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

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.

* 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.
* 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.
* 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.
* 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.
* 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.
* Staff in GP surgeries or dental practices who do not provide health care (for example, receptionists) will not be in regulated activity.
1. **Providing Personal Care**
* 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.
* 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.
* 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.
* 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, would be engaging in regulated activity.
2. A beauty therapist who attends a day care centre once a week and provides manicures for anyone who would *like* one, instead of for people who *need them* because of their age, illness or disability, is not engaging in regulated activity.
3. A volunteer who prepares and serves a meal to an adult in their own home (but does not feed the adult) is not engaging in regulated activity. To be engaged in regulated activity you must provide physical assistance to the person, for example spoon feeding that person, or you must be prompting and supervising (for example, prompting and supervising a person with dementia, because without it they would not eat), or you must be training or instructing (for example, teaching a person who has suffered a stroke to eat using adapted cutlery).
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.
6. **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.

1. **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:

* managing the person’s cash,
* paying the person’s bills, or
* 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.
3. **Assistance in the conduct of a person’s own affairs**

Anyone who provides assistance in the conduct of an adult’s own affairs by virtue of:

* Lasting power of attorney under the Mental Capacity Act 2005.
* Enduring power of attorney under the Mental Capacity Act 2005.
* Being appointed as the adult’s deputy under the Mental Capacity Act 2005.
* Being an Independent Mental Health Advocate.
* Being an Independent Mental Capacity Advocate.
* Providing independent advocacy services under the National Health Service Act 2006 or National Health Service (Wales) Act 2006.
* Receiving payments on behalf of that person under the Social Security Administration Act 1992 is in regulated activity.
1. **Conveying**

The secondary legislation that will prescribe when conveying is regulated activity is soon to be laid before Parliament (as of September 2012).

* 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.
* 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.
* 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.

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