



# Protection of Freedoms Act 2012

## 2012 CHAPTER 9

### PART 5

SAFEGUARDING VULNERABLE GROUPS, CRIMINAL RECORDS ETC.

### CHAPTER 1

SAFEGUARDING OF VULNERABLE GROUPS

*Restrictions on scope of regulation: England and Wales*

#### **64 Restriction of scope of regulated activities: children**

- (1) Parts 1 and 3 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (regulated activity relating to children and the period condition) are amended as follows.
- (2) In paragraph 1(1)(b) (frequency and period condition for regulated activity), at the beginning, insert “except in the case of activities falling within sub-paragraph (1A),”.
- (3) After paragraph 1(1) insert—
  - “(1A) The following activities fall within this sub-paragraph—
    - (a) relevant personal care, and
    - (b) health care provided by, or under the direction or supervision of, a health care professional.
  - (1B) In this Part of this Schedule “relevant personal care” means—
    - (a) physical assistance which is given to a child who is in need of it by reason of illness or disability and is given in connection with eating or drinking (including the administration of parenteral nutrition),
    - (b) physical assistance which is given to a child who is in need of it by reason of age, illness or disability and is given in connection with—

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- (i) toileting (including in relation to the process of menstruation),
- (ii) washing or bathing, or
- (iii) dressing,
- (c) the prompting (together with supervision) of a child, who is in need of it by reason of illness or disability, in relation to the performance of the activity of eating or drinking where the child is unable to make a decision in relation to performing such an activity without such prompting and supervision,
- (d) the prompting (together with supervision) of a child, 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 (b) (i) to (iii) where the child is unable to make a decision in relation to performing such an activity without such prompting and supervision,
- (e) any form of training, instruction, advice or guidance which—
  - (i) relates to the performance of the activity of eating or drinking,
  - (ii) is given to a child who is in need of it by reason of illness or disability, and
  - (iii) does not fall within paragraph (c), or
- (f) any form of training, instruction, advice or guidance which—
  - (i) relates to the performance of any of the activities listed in paragraph (b)(i) to (iii),
  - (ii) is given to a child who is in need of it by reason of age, illness or disability, and
  - (iii) does not fall within paragraph (d).

(1C) In this Part of this Schedule —

“health care” includes all forms of health care provided for children, whether relating to physical or mental health and also includes palliative care for children and procedures that are similar to forms of medical or surgical care but are not provided for children in connection with a medical condition,

“health care professional” means 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 2002.

(1D) 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 a child by any person acting on behalf of an organisation established for the purpose of providing first aid.”

(4) In paragraph 1(2)(c) (work activities at certain establishments to be regulated activity) for “any form of work (whether or not for gain)” substitute “any work falling within sub-paragraph (2A) or (2B)”.

(5) After paragraph 1(2) insert—

“(2A) Work falls within this sub-paragraph if it is any form of work for gain, other than any such work which—

- (a) is undertaken in pursuance of a contract for the provision of occasional or temporary services, and
  - (b) is not an activity mentioned in paragraph 2(1) (disregarding paragraph 2(3A) and (3B)(b)).
- (2B) Work falls within this sub-paragraph if it is any form of work which is not for gain, other than—
- (a) any such work which—
    - (i) is carried out on a temporary or occasional basis, and
    - (ii) is not an activity mentioned in paragraph 2(1) (disregarding paragraph 2(3A) and (3B)(b)), or
  - (b) any such work which is, on a regular basis, subject to the day to day supervision of another person who is engaging in regulated activity relating to children.
- (2C) The reference in subsection (2B)(b) to day to day supervision is a reference to such day to day supervision as is reasonable in all the circumstances for the purpose of protecting any children concerned.”
- (6) Also in paragraph 1—
- (a) in sub-paragraph (7) (meaning of “acting as a child minder”) for “section 79A of that Act” substitute “section 19 of the Children and Families (Wales) Measure 2010”,
  - (b) omit sub-paragraph (8) (exercise of functions of certain persons to be regulated activity),
  - (c) in sub-paragraph (9) (exercise of functions of persons mentioned in paragraph 4(1) to be regulated activity) for “a person mentioned in paragraph 4(1)” substitute “the Children’s Commissioner for Wales or the deputy Children’s Commissioner for Wales”,
  - (d) in sub-paragraph (9B) (exercise of certain inspection etc. functions to be regulated activity)—
    - (i) omit paragraph (a),
    - (ii) in paragraph (b) for “section 79U(3) of the Children Act 1989” substitute “section 41 or 42 of the Children and Families (Wales) Measure 2010”,
    - (iii) in paragraph (c) after “taken” insert “in relation to Wales” and for “that Act” substitute “the Children Act 1989”,
    - (iv) in paragraph (d) after “inspection”, where it first appears, insert “in Wales”,
    - (v) in paragraph (e) after “taken” insert “in relation to Wales”,
    - (vi) in paragraph (f) omit “18B or”,
    - (vii) in paragraph (h), after “inspection”, where it first appears, insert “in Wales”,
    - (viii) in paragraph (m) omit “48 or”,
    - (ix) in paragraph (n) after “inspection” insert “in Wales”, and
    - (x) omit paragraphs (p) to (t),
  - (e) in sub-paragraph (10) (inspectors) omit paragraphs (a), (ba), (d) and (e),
  - (f) omit sub-paragraph (12A) (accessing certain databases to be regulated activity),

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- (g) omit sub-paragraph (13A) (exercise of certain functions of Care Quality Commission to be regulated activity),
  - (h) in sub-paragraph (14) (day to day management or supervision of a person carrying out regulated activity to be regulated activity) for “(8), (9C), (11) or (13A)” substitute “(9A), (9C) or (11)”, and
  - (i) after sub-paragraph (14) insert—
    - “(15) Any activity which consists in or involves on a regular basis the day to day management or supervision of a person who would be carrying out an activity mentioned in sub-paragraph (1) or (2) but for the exclusion for supervised activity in paragraph 2(3A) or (3B) (b) or sub-paragraph (2B)(b) above is a regulated activity relating to children.”
- (7) In paragraph 2 (activities referred to in paragraph 1(1))—
- (a) in sub-paragraph (1) omit paragraph (d) (treatment and therapy provided for a child),
  - (b) in sub-paragraph (2)—
    - (i) for “, (c) and (d)” substitute “and (c)”, and
    - (ii) omit paragraph (d), and
  - (c) after sub-paragraph (3) insert—
    - “(3A) Sub-paragraph (1)(a) does not include any form of teaching, training or instruction of children which is, on a regular basis, subject to the day to day supervision of another person who is engaging in regulated activity relating to children.
    - (3B) Sub-paragraph (1)(b)—
      - (a) does not include any health care provided otherwise than by (or under the direction or supervision of) a health care professional, and
      - (b) does not, except in the case of relevant personal care or of health care provided by (or under the direction or supervision of) a health care professional, include any form of care for or supervision of children which is, on a regular basis, subject to the day to day supervision of another person who is engaging in regulated activity relating to children.
    - (3C) The references in subsections (3A) and (3B)(b) to day to day supervision are references to such day to day supervision as is reasonable in all the circumstances for the purpose of protecting any children concerned.
    - (3D) Sub-paragraph (1)(c) does not include any legal advice.”
- (8) In paragraph 3(1) (list of establishments referred to in paragraph 1(2) and (9C)) omit paragraph (c).
- (9) Omit paragraph 4 (list of persons referred to in paragraph 1(9)).
- (10) In paragraph 10(2) (the period condition) for “, (c) or (d)” substitute “or (c)”.

## **65 Restriction of definition of vulnerable adults**

- (1) Omit section 59 of the Safeguarding Vulnerable Groups Act 2006 (definition of vulnerable adults).
- (2) In section 60(1) of that Act (interpretation of Act)—
  - (a) after “In this Act—” insert—

““adult” means a person who has attained the age of 18;”, and”
  - (b) in the definition of “vulnerable adult”, for the words “must be construed in accordance with section 59” substitute “means any adult to whom an activity which is a regulated activity relating to vulnerable adults by virtue of any paragraph of paragraph 7(1) of Schedule 4 is provided”.

## **66 Restriction of scope of regulated activities: vulnerable adults**

- (1) Parts 2 and 3 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (regulated activity relating to vulnerable adults and the period condition) are amended as follows.
- (2) For paragraph 7(1) to (3) (main activities which are regulated activity) substitute—
  - “(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 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 2002.
  - (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—

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- (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,
    - (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 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,

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- (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.”
- (3) Omit paragraph 7(4) (certain activities in care homes to be regulated activity).
  - (4) In paragraph 7(5) (day to day management or supervision of certain activities to be regulated activity) omit “or (4)”.
  - (5) In paragraph 7(7)(f) (inspection functions) omit “English local authority social services or”.
  - (6) Omit paragraph 7(8A) (certain functions of Care Quality Commission to be regulated activity).
  - (7) In paragraph 7(9) (functions of certain persons to be regulated activity) for “a person mentioned in paragraph 8(1)” substitute “the Commissioner for older people in Wales or the deputy Commissioner for older people in Wales”.
  - (8) Omit paragraph 8 (the persons referred to in paragraph 7(9) whose functions are to be regulated activity).
  - (9) In paragraph 10(2) (the period condition)—
    - (a) omit “or 7(1)(a), (b), (c), (d) or (g)”, and
    - (b) in paragraph (b), omit “or vulnerable adults (as the case may be)”.

## **67 Alteration of test for barring decisions**

- (1) For sub-paragraphs (2) and (3) of paragraph 1 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (automatic inclusion of person to whom paragraph applies in children’s barred list) substitute—
  - “(2) If the Secretary of State has reason to believe that this paragraph might apply to a person, the Secretary of State must refer the matter to ISA.
  - (3) If (whether or not on a reference under sub-paragraph (2)) ISA is satisfied that this paragraph applies to a person, it must include the person in the children’s barred list.”
- (2) For sub-paragraphs (2) to (4) of paragraph 2 of that Schedule to that Act (inclusion of person to whom paragraph applies in children’s barred list with right to make representation afterwards) substitute—
  - “(2) If the Secretary of State has reason to believe that—
    - (a) this paragraph might apply to a person, and
    - (b) the person is or has been, or might in future be, engaged in regulated activity relating to children,the Secretary of State must refer the matter to ISA.
  - (3) Sub-paragraph (4) applies if (whether or not on a reference under sub-paragraph (2)) it appears to ISA that—

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- (a) this paragraph applies to a person, and
  - (b) the person is or has been, or might in future be, engaged in regulated activity relating to children.
- (4) ISA must give the person the opportunity to make representations as to why the person should not be included in the children’s barred list.
- (5) Sub-paragraph (6) applies if—
- (a) the person does not make representations before the end of any time prescribed for the purpose, or
  - (b) the duty in sub-paragraph (4) does not apply by virtue of paragraph 16(2).
- (6) If ISA—
- (a) is satisfied that this paragraph applies to the person, and
  - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children,
- it must include the person in the list.
- (7) Sub-paragraph (8) applies if the person makes representations before the end of any time prescribed for the purpose.
- (8) If ISA—
- (a) is satisfied that this paragraph applies to the person,
  - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children, and
  - (c) is satisfied that it is appropriate to include the person in the children’s barred list,
- it must include the person in the list.”
- (3) In paragraph 3 of that Schedule to that Act (inclusion in children’s barred list on behaviour grounds)—
- (a) in sub-paragraph (1)(a) for the words from “has” to “conduct,” substitute “—
    - (i) has (at any time) engaged in relevant conduct, and
    - (ii) is or has been, or might in future be, engaged in regulated activity relating to children,”
  - (b) in sub-paragraph (3), after paragraph (a) (and before the word “and” at the end of the paragraph), insert—
    - “(aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children,” and
  - (c) in sub-paragraph (3)(b) for “appears to ISA” substitute “is satisfied”.
- (4) In paragraph 5 of that Schedule to that Act (inclusion in children’s barred list because of risk of harm)—
- (a) in sub-paragraph (1)(a) for “falls within sub-paragraph (4)” substitute “—
    - (i) falls within sub-paragraph (4), and
    - (ii) is or has been, or might in future be, engaged in regulated activity relating to children,”
  - (b) in sub-paragraph (3), after paragraph (a) (and before the word “and” at the end of the paragraph), insert—



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- “(aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children,” and
- (c) in sub-paragraph (3)(b) for “appears to ISA” substitute “is satisfied”.
- (5) For sub-paragraphs (2) and (3) of paragraph 7 of that Schedule to that Act (automatic inclusion of person to whom paragraph applies in adults’ barred list) substitute—
- “(2) If the Secretary of State has reason to believe that this paragraph might apply to a person, the Secretary of State must refer the matter to ISA.
- (3) If (whether or not on a reference under sub-paragraph (2)) ISA is satisfied that this paragraph applies to a person, it must include the person in the adults’ barred list.”
- (6) For sub-paragraphs (2) to (4) of paragraph 8 of that Schedule to that Act (inclusion of person to whom paragraph applies in adults’ barred list with right to make representation afterwards) substitute—
- “(2) If the Secretary of State has reason to believe that—
- (a) this paragraph might apply to a person, and
- (b) the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,
- the Secretary of State must refer the matter to ISA.
- (3) Sub-paragraph (4) applies if (whether or not on a reference under sub-paragraph (2)) it appears to ISA that—
- (a) this paragraph applies to a person, and
- (b) the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults.
- (4) ISA must give the person the opportunity to make representations as to why the person should not be included in the adults’ barred list.
- (5) Sub-paragraph (6) applies if—
- (a) the person does not make representations before the end of any time prescribed for the purpose, or
- (b) the duty in sub-paragraph (4) does not apply by virtue of paragraph 16(2).
- (6) If ISA—
- (a) is satisfied that this paragraph applies to the person, and
- (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,
- it must include the person in the list.
- (7) Sub-paragraph (8) applies if the person makes representations before the end of any time prescribed for the purpose.
- (8) If ISA—
- (a) is satisfied that this paragraph applies to the person,

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- (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults, and
- (c) is satisfied that it is appropriate to include the person in the adults' barred list,

it must include the person in the list.”

(7) In paragraph 9 of that Schedule to that Act (inclusion in adults' barred list on behaviour grounds)—

- (a) in sub-paragraph (1)(a) for the words from “has” to “conduct,” substitute “—
  - (i) has (at any time) engaged in relevant conduct, and
  - (ii) is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,”
- (b) in sub-paragraph (3), after paragraph (a) (and before the word “and” at the end of the paragraph), insert—
  - “(aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,” and
- (c) in sub-paragraph (3)(b) for “appears to ISA” substitute “is satisfied”.

(8) In paragraph 11 of that Schedule to that Act (inclusion in adults' barred list because of risk of harm)—

- (a) in sub-paragraph (1)(a) for “falls within sub-paragraph (4)” substitute “—
  - (i) falls within sub-paragraph (4), and
  - (ii) is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults”,
- (b) in sub-paragraph (3), after paragraph (a) (and before the word “and” at the end of the paragraph), insert—
  - “(aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,” and
- (c) in sub-paragraph (3)(b) for “appears to ISA” substitute “is satisfied”.