



# 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)”.