
STATUTORY INSTRUMENTS

2002 No. 233

The Police Act 1997 (Criminal Records) Regulations 2002

[^{F1}^{F2}Work with adults]

5B.—(1) [^{F3}The circumstances referred to in regulation 5A(b) are]—

- (a) any employment or other work which is normally carried out in a hospital used only for the provision of high security psychiatric services within the meaning of section 4(2) of the National Health Service Act 2006;
- (b) the provision to an adult of regulated activity relating to vulnerable adults within the meaning of Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 ;
- (c) the provision of any activity mentioned in paragraph (6) to an adult who receives a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10), provided that the person carrying out the activity does so—
 - (i) at any time on more than three days in any period of 30 days;
 - (ii) at any time between 2 a.m. and 6 a.m. and the activity gives the person the opportunity to have face-to-face contact with the adult; or
 - (iii) at least once a week on an ongoing basis;
- (d) the regular day to day management or supervision of a person mentioned in paragraph (c) above;
- (e) the exercise of any of the functions of the Welsh Ministers relating to the inspection of the following 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 exercise of that function, to have contact with an adult who receives a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10) —

[^{F4}(i) a local authority (within the meaning of section 197 of the Social Services and Well-being (Wales) Act 2014) in the exercise of its social services functions (within the meaning of that Act);]

(ii) an establishment in relation to which a requirement to register arises under section 11 of the Care Standards Act 2000;

(iii) an agency in relation to which such a requirement arises;

(iv) a person to whom Part 2 of that Act applies in pursuance of regulations under section 42 of that Act;

[a regulated service, within the meaning of Part 1 of the Regulation and Inspection of ^{F5}(iva) Social Care (Wales) Act 2016, in relation to which a requirement to register arises under section 5 of that Act;]

(v) an NHS body within the meaning of section 148 of the Health and Social Care (Community Health and Standards) Act 2003; or

(vi) 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 adults who receive a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10);

- (f) the exercise of a function of the Care Quality Commission in so far as the function—
 - (i) relates to the inspection of anything which is listed in section 60(1) of the Health and Social Care Act 2008 and involves the provision of social services, care, treatment or therapy for adults who receive a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10); and
 - (ii) gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in exercise of that function, to have contact with an adult who receives a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10);
- (g) the exercise of a function of a person who is—
 - (i) a member of a local authority and discharges any social services functions of a local authority which relate wholly or mainly to adults who receive a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10);
 - (ii) a member of an executive of a local authority which discharges any such functions;
 - (iii) a member of a committee of an executive of a local authority which discharges any such functions; or
 - (iv) a member of an area committee, or any other committee, of a local authority which discharges any such functions;
 - (v) a chief executive of a local authority that has any social services functions;
 - (vi) a director of adult social services of a local authority in England;
 - (vii) a director of social services of a local authority in Wales;
 - (viii) a Commissioner for older people in Wales or deputy Commissioner for older people in Wales;
 - (ix) a charity trustee of a charity whose workers normally engage in any activity which is work with adults;
 - (x) a person who is required to register to carry out a regulated activity within the meaning of the Health and Social Care Act 2008 where that activity will be carried out in relation to an adult who receives a health or social care service within the meaning of paragraph (9).

(2) In paragraph (1)(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).

(3) In paragraph (1)(g) any reference to a committee includes a reference to any sub-committee which discharges any functions of that committee.

(4) In paragraph (1)(g)(vi) in relation to a local authority which has not appointed a director of children's services under section 18 of the Children Act 2004 the word "adult" must be ignored.

(5) In paragraph (1)(g)(ix) an individual is a worker for a charity if he does work under arrangements made by the charity; but the arrangements referred to in this paragraph do not include any arrangements made for purposes which are merely incidental to the purposes for which the charity is established.

(6) For the purposes of this regulation "activity" means—

- (a) any form of care or supervision;

- (b) any form of treatment or therapy;
 - (c) any form of training, teaching, instruction, assistance, advice or guidance provided wholly or mainly for adults who receive a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10);
 - (d) moderating a public electronic interactive communication service which is likely to be used wholly or mainly by adults who receive a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10);
 - (e) any form of work carried out in a care home (for the purposes of the Care Standards Act 2000) which is exclusively or mainly for adults, whether or not for gain, that gives the person carrying out the work the opportunity to have contact with the adults resident at that care home;
 - ^{F6}(ea) [any form of work carried out, whether or not for gain, at a place which provides a care home service (within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016) which is provided wholly or mainly to adults that gives the person carrying out the work the opportunity to have contact with the adults who are resident at that place;]
 - (f) representation of, or advocacy services for, adults who receive a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10), by a service which has been approved by the Secretary of State or created by any enactment, and which is of such a kind as to enable the person to have access to such adults in the course of his normal duties in providing such services;
 - (g) the conveying of an adult who receives a health or social care service within the meaning of paragraph (9) or a specified activity within the meaning of paragraph (10) (whether or not the adult is accompanied by a person caring for them).
 - (a) (7) (a) For the purposes of paragraph (6)(d) a person moderates a public electronic interactive communication service if, for the purposes of protecting the adults mentioned in that sub-paragraph, he has any function relating to—
 - (i) monitoring the content of matter which forms any part of the service;
 - (ii) removing matter from, or preventing the addition of matter to, the service; or
 - (iii) controlling access to, or use of, the service.
 - (b) But a person does not moderate a public electronic interactive communication service as mentioned in sub-paragraph (7)(a)(ii) or (iii) unless he has—
 - (i) access to the content of the matter;
 - (ii) contact with users of the service.
 - (a) (8) (a) For the purposes of paragraph (6) “activity” does not include any activity carried out in the course of a family relationship, or carried out in the course of a personal relationship for no commercial consideration.
 - (b) For the purposes of paragraph 8(a) “family relationship” includes a relationship between two persons who live in the same household and treat each other as though they were members of the same family.
 - (c) For the purposes of paragraph 8(a) a “personal relationship” is a relationship between or among friends, where a “friend” of a person includes a person who is a friend of a member of that person’s family.
- (9) For the purposes of this regulation “health or social care service” means—
- (a) residential accommodation provided for an adult in connection with any care or nursing he requires;

- (b) accommodation provided for an adult who is or has been a pupil attending a residential special school, where that school is—
- (i) a special school within the meaning of section 337 of the Education Act 1996 ;
 - (ii) an independent school within the meaning of section 463 of that Act which is in England and is specially organised to make special educational provision for pupils with special educational needs (within the meaning of [F7]section 579] of that Act) or is in Wales and is [F8]specially organised to make additional learning provision for pupils with additional learning needs (within the meaning of section 579 of that Act)];
 - (iii) an independent school within the meaning of section 463 of that Act not falling within sub-paragraph (b)(ii) which, [F9]during any period before 1 September 2021 when the adult was attending it, either was approved by the Welsh Ministers under section 347 of that Act or, with the consent of the Welsh Ministers under section 347(5)(b) of that Act, provided places for children with special educational needs (within the meaning of section 579 of that Act as it applied immediately before that date)];
 - (iv) an institution within the further education section (within the meaning of section 91 of the Further and Higher Education Act 1992) which provides accommodation for children; or
 - (v) a 16 to 19 Academy, within the meaning of section 1B of the Academies Act 2010, which provides accommodation for children;
- (c) sheltered housing;
- (d) care of any description or assistance provided to an adult by reason of his age, health or any disability he has, which is provided to the adult in the place where he is, for the time being, living, whether provided continuously or not;
- (e) any form of health care, including treatment, therapy or palliative care of any description;
- (f) support, assistance or advice for the purpose of developing an adult’s capacity to live independently in accommodation, or sustaining their capacity to do so;
- (g) any service provided specifically for adults because of their age, any disability, physical or mental illness, excluding a service provided specifically for an adult, with one or more of the following disabilities (unless that person has another disability)—
- (i) dyslexia;
 - (ii) dyscalculia;
 - (iii) dyspraxia;
 - (iv) Irlen syndrome;
 - (v) alexia;
 - (vi) auditory processing disorder;
 - (vii) dysgraphia;
- (h) any service provided specifically to an expectant or nursing mother in receipt of residential accommodation pursuant to arrangements made under section 21(1)(aa) of the National Assistance Act 1948 or care pursuant to paragraph 1 of Schedule 20 to the National Health Service Act 2006 [F10]or accommodation under Part 1 of the Care Act 2014 (care and support).]
- (10) For the purposes of this regulation “specified activity” means—
- (a) the detention of an adult in lawful custody in a prison (within the meaning of the Prison Act 1952), a remand centre, young offender institution or a secure training centre (as mentioned

- in section 43 of that Act) or an attendance centre (within the meaning of section 53(1) of that Act);
- (b) the detention of a detained person (within the meaning of Part 8 of the Immigration and Asylum Act 1999) who is detained in a removal centre or short-term holding facility (within the meaning of that Part) or in pursuance of escort arrangements made under section 156 of that Act;
 - (c) the supervision of an adult by virtue of an order of a court by a person exercising functions for the purposes of Part 1 of the Criminal Justice and Court Services Act 2000;
 - (d) the supervision of an adult by a person acting for the purposes mentioned in section 1(1) of the Offender Management Act 2007;
 - (e) the provision to an adult of assistance with the conduct of their affairs in situations where—
 - (i) a lasting power of attorney is created in respect of the adult in accordance with section 9 of the Mental Capacity Act 2005 or an application is made under paragraph 4 of Schedule 1 to that Act for the registration of an instrument intended to create a lasting power of attorney in respect of the adult;
 - (ii) an enduring power of attorney (within the meaning of Schedule 4 to that Act) in respect of the adult is registered in accordance with that Schedule or an application is made under that Schedule for the registration of an enduring power of attorney in respect of the adult;
 - (iii) an order under section 16 of that Act has been made by the Court of Protection in relation to the making of decisions on the adult's behalf, or such an order has been applied for;
 - (iv) an independent mental capacity advocate is or is to be appointed in respect of the adult in pursuance of arrangements under section 35 of that Act;
 - (v) 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) are or are to be provided in respect of the adult; or
 - (vi) a representative is or is to be appointed to receive payments on the adult's behalf in pursuance of regulations made under the Social Security Administration Act 1992;
 - (f) payments are made to the adult or to another person on the adult's behalf under arrangements made under section 57 of the Health and Social Care Act 2001;
 - (g) payments are made to the adult or to another person on the adult's behalf under section 12A(1) or under regulations made under section 12A(a) of the National Health Service Act 2006 or under regulations made under section 12A(4) of that Act.]

Textual Amendments

- F1** Regs. 5B-7 inserted (17.6.2013) by [The Police Act 1997 \(Criminal Records\) \(Amendment\) Regulations 2013 \(S.I. 2013/1194\)](#), regs. 1(1), 2(5), **Sch.**
- F2** Reg. 5B heading substituted (6.5.2014) by [The Police Act 1997 \(Criminal Records\) \(Amendment No. 2\) Regulations 2014 \(S.I. 2014/955\)](#), regs. 1(1), **2(3)(a)**
- F3** Words in reg. 5B(1) substituted (6.5.2014) by [The Police Act 1997 \(Criminal Records\) \(Amendment No. 2\) Regulations 2014 \(S.I. 2014/955\)](#), regs. 1(1), **2(3)(b)**
- F4** Reg. 5B(1)(e)(i) substituted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) \(Secondary Legislation\) Regulations 2016 \(S.I. 2016/211\)](#), reg. 1(2), **Sch. 3 para. 44**
- F5** Reg. 5B(1)(e)(iva) inserted (2.4.2018) by [The Regulation and Inspection of Social Care \(Wales\) Act 2016 \(Consequential Amendments to Secondary Legislation\) Regulations 2018 \(S.I. 2018/48\)](#), reg. 1(2), **Sch. 1 para. 7(2)(a)**

- F6** Reg. 5B(6)(ea) inserted (2.4.2018) by The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2018 (S.I. 2018/48), reg. 1(2), **Sch. 1 para. 7(2)(b)**
- F7** Words in reg. 5B(9)(b)(ii) substituted (1.9.2014) by The Special Educational Needs (Consequential Amendments to Subordinate Legislation) Order 2014 (S.I. 2014/2103), arts. 1, **9**
- F8** Words in reg. 5B(9)(b)(ii) substituted (18.1.2022) by The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential Amendments) (No. 3) Regulations 2021 (S.I. 2021/1457), regs. 1, **2(2)**
- F9** Words in reg. 5B(9)(b)(iii) substituted (18.1.2022) by The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Consequential Amendments) (No. 3) Regulations 2021 (S.I. 2021/1457), regs. 1, **2(3)**
- F10** Words in reg. 5B(9)(h) inserted (1.4.2015) by The Care Act 2014 (Consequential Amendments) (Secondary Legislation) Order 2015 (S.I. 2015/643), art. 1(2), **Sch. para. 18** (with art. 4)

Changes to legislation:

There are currently no known outstanding effects for the The Police Act 1997 (Criminal Records) Regulations 2002, Section 5B.