**Regulated Work with Protected adults**

**How to assess whether an individual is doing regulated work**

There are five steps to assessing whether an individual is doing regulated work with adults:

1. **Is it work?** Will the individual be carrying out either paid or unpaid work?
2. **Who are they working with?** Will the individual be working with protected adults?
3. **What do they do?** Will the individual be carrying out a particular activity, working in an establishment, holding a particular position or supervising/managing those in regulated work?
4. **Is it their normal duties?** Is it the individual’s normal duties to carry regulated work with protected adults?
5. **Are there any exceptions which apply?** If delivering activities to protected adults is this incidental to the individual’s normal duties?

It is suggested that these five steps are always followed in making any assessment; this process is illustrated in the case studies detailed throughout this handout.

A protected adult is defined as an individual aged 16 or over who is provided with (and thus receives) a type of care, health, community care or welfare service.

**Registered Care Services** (services registered with the Care Inspectorate formerly known as the Care Commission)

* A support service
* An adult placement service
* A care home service
* A housing support service

**Health Services**

A service provided or secured by a public health body concerning the treatment, care and support of, and provision of advice and assistance to individuals in relation to health and well-being, or similar services provided by an independent health care service provider.

A Health Service is likely to be one that:

* Replaces a core NHS service
* Is wholly funded by a health body
* Receives a high proportion of referrals from primary care services

Many voluntary sector services do not meet the above test as they are deemed to be an ancillary NHS service. An ancillary NHS service is likely to be one that:

* Receives a small proportion of funding from a health body
* Is a service which is not provided in all parts of Scotland
* Is a service which receives self referrals

Services deemed to be an ancillary NHS service cannot access PVG disclosure records as a Health Service but may be eligible to access PVG disclosure records under the Welfare Service definition.

**Community Care Services**

A service provided or secured by a council under the Social Work (Scotland) Act 1968 or the Mental Health (Care and Treatment Act 2003).

**Welfare Service**

A welfare service includes any service which provides support, assistance, advice or counselling to individuals with particular needs, meeting the following conditions. The service must be a service that:

(a.) is provided in the course of work to one or more persons aged 16 or over

(b.) is delivered on behalf of an organisation

(c.) requires training to be undertaken by the person delivering the service

(d.) has a frequency and formality attached to the service, and

(e.) either

(i.) requires a contract to be agreed between the service provider and the recipient of the service prior to the service being carried out, or

(ii.) is personalised to an individual adult’s needs.

In order to qualify as a welfare service, the service must include all the mandatory elements (a) to (d) above and, in addition, one or other of the elements in (e).

**Particular needs**

Note that the service must be also provided to individuals with **particular needs.**

Particular needs are those over and above the general needs that any individual might have. For example, the need for regular meals is a general need (everyone needs this) but the need for assistance in preparing meals is a particular need (only some people with, e.g. a disability, need that assistance). Similar arguments apply to: (for example) personal care, washing, cleaning, access to shops, services and social contact. Everybody shares the need for these things, but some individuals (with particular needs) require specific assistance with them.

**Particular needs – definition**

***Particular need is "a specific requirement an individual may have arising from either physical or mental illness, or physical or mental disability which may disadvantage that person when compared to the rest of society".***

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| **Individuals with particular needs** | **Yes** | **No** |
| * individuals with (temporary or permanent) physical capacity issues above and beyond the normal course of events, i.e. not including ailments which affect everyone from time to time such as colds or flu;
 |  |  |
| * individuals with (temporary or permanent) mental disorder (i.e. mental illness, learning disability or personality disorder);
 |  |  |
| * individuals with degenerative diseases;
 |  |  |
| * individuals with drug or alcohol issues
 |  |  |
| * individuals suffering bereavement
 |  |  |

|  |  |  |
| --- | --- | --- |
| **Individuals who do not have particular needs** | **Yes** | **No** |
| * people with debt problems
 |  |  |
| * the elderly
 |  |  |
| * people who do not have English as a first language
 |  |  |
| * individuals who are homeless
 |  |  |
| * people in detention
 |  |  |
| * the jobless, or otherwise economically deprived
 |  |  |
| * people with literacy or numeracy problems (although these may be symptoms of a condition which does give rise to particular needs)
 |  |  |
| * friends or relatives of protected adults or individuals with particular needs
 |  |  |

**Regulated work with adults**

**Schedule 3**

**Regulated work with adults is work in –**

* a position whose normal duties include carrying out particular activities (section 1)
* a position whose normal duties include work in an establishment (section 2)
* particular positions (section 3)
* a position whose normal duties include the day to day supervision of an individual doing regulated work (section 4)

**Normal duties**

The concept of normal duties is extremely important in limiting the scope of regulated work. For

an activity or work in an establishment to be regulated work, the carrying out of the activity or

the work in the establishment must be part of the individual's normal duties.

Normal duties can be considered as something the individual might be expected to do as part of

their post on an ongoing basis, for example appearing in a job description. Normal duties

exclude one-off occurrences and unforeseeable events.

No particular frequency for undertaking the work or duration of work are specified in the Act as

these will depend on the context.

An activity or work is likely to be “normal duties” when:

* it appears in an individual's job description, task description or contract (but these should not be manipulated to stretch the boundary of the PVG Scheme);
* it can reasonably be anticipated; or
* it occurs regularly.

An activity or work is unlikely to be “normal duties” when:

* done in response to an emergency (unless by an emergency worker);
* arranged at the last minute to stand in for sickness or other unexpected absence of another worker; or
* done as a one-off activity of short duration which is not part of the individual’s normal routine or occupation.

**Section 1 (Particular activities)**

* Caring for protected adults (except [5] caring for protected adults under the age of 18 which is merely incidental to caring for children generally).
* Teaching, instructing, training or supervising protected adults (except [1] teaching, instructing, training or supervising protected adults which is merely incidental to teaching, instructing, training or supervising individuals who are not protected adults).
* Being in sole charge of protected adults (except [1] being in sole charge of protected adults which is merely incidental to being in sole charge of individuals who are not protected adults).
* Providing assistance, advice or guidance to a protected adult or particular protected adults which relates to physical or emotional well-being, education or training (except [1] providing assistance, advice or guidance to a protected adult or protected adults which is merely incidental to providing assistance, advice or guidance to individuals who are not protected adults).

**[1] Incidental test**

The scope of regulated work is narrowed by the incidental test. Some, but not all, activities with children

or protected adults are excluded from being regulated work if the activity is occurring incidentally to

working with individuals who are not children or protected adults. For example, a teacher in a school is

doing regulated work with children but a college lecturer running woodwork classes in the evening

aimed at adults is outside the scope of regulated work, even if one or two children attend his class. This

is because the presence of children (and the teaching of children) is incidental to the main activity and

purpose of the class which is to teach adults.

An activity is likely to be incidental when:

* open to all (characterised by where the event is held, where it is advertised, admission policy etc);
* attractive to a wide cross-section of society; or
* attendance is discretionary.

An activity is unlikely to be incidental when:

* targeted at children or protected adults (characterised by where the event is held, where it is advertised, admission policy etc);
* more attractive to children or protected adults than others; or
* attendance is mandatory.

An important consideration is the degree to which it could be reasonably foreseen that children

or protected adults would attend. Whether an activity is incidental or not is not so much about the

numbers of children or protected adults attending but the purpose and intended client group for the

activity. For example, an outdoor navigation skills day event advertised in a mountaineering magazine

for the population in general may or may not attract some participants who are children. Whether the

turnout is 5% or 50% children, the instructing of children is still an incidental activity.

**Section 2 (Establishments)**

* A care home – meaning accommodation occupied mainly or exclusively by individuals aged 16 or over which is provided by an organisation carrying on a care home service [7]
* A residential establishment or accommodation [7] occupied exclusively or mainly by individuals aged 16 or over which is provided by, or the provision of which is secured by, a council under –
1. The Social Work (Scotland) Act 1968, or
2. Section 25 (provision of care and support services by local authority) of the Mental Health (Care and Treatment) (Scotland) Act 2003

[7] Positions in the above establishments are regulated work positions if the post holder carries out any of the particular activities detailed in section 1 or if the post holder’s normal duties give the holder of the position, when doing anything permitted or required in connection with the position, the opportunity to haven unsupervised contact with protected adults.

**Section 3 (Positions)**

* Charity trustee of a charity whose -
	+ main purpose is to provide benefits for protected adults, and
	+ principal means of delivery of those benefits is by its workers doing regulated work with adults.

An individual works for a charity if the individual works under any arrangements made by the charity.

**Section 4 Supervising & Management**

* A position whose normal duties include the day to day supervision or management of an individual doing regulated work with adults by virtue of section 1 or 2 above

An individual may be doing regulated work with protected adults if they are responsible for the day to

day supervision or management of an individual doing regulated work through the activities the individual

performs or the establishments in which the individual works. But note this provision on supervision of

an individual does not cover supervising an individual who is in one of the particular positions of trust or

responsibility.

Individuals at one remove from the front-line, those with day to day supervision or management

responsibilities for individuals doing regulated work are in a powerful position to safeguard (or harm)

vulnerable groups by guiding or directing those individuals in their work.

A position is likely to include day to day supervision or management of an individual where:

* the holder of the position is responsible for the management, supervision, appraisal, training and immediate welfare of the individual (but note that responsibility for the recruitment, discipline and dismissal may reside with a dedicated HR department in large organisations);
* the holder of the position meets regularly with the individual to discuss and review the individual's work;
* the holder of the position quality assures the individual's work (e.g. by being present on occasion or reviewing outputs); or
* a person more senior than the holder of the position would hold that person responsible for any failing in respect of the individual’s work.

**Collective responsibility**

Collective responsibility for a policy, process or organisation does not necessarily equate to collective

responsibility for day to day supervision or management of workers. Even where the day to day

supervision or management of an individual is the collective responsibility of a group, it is not the

intention of the PVG Act that all members of the group are themselves doing regulated work and

therefore expected to become PVG Scheme members. In such circumstances, it is preferable that one

member of the group takes primary responsibility for the day to day supervision or management of the

individual, at least in respect of the aspects of their work that are regulated work. It is also important to

consider the “day to day” element of the test.

For example, a Kirk Session might have collective responsibility for youth work in a church. However, it is unlikely that many members have responsibility for the day to day supervision or management of the youth worker. It should be possible to allocate responsibilities such that only one of their number (one might expect this to be the Minister) is doing regulated work by virtue of this function.

[5] Incidental Activity (caring for adults)

 Remember that 16 and 17 year olds can be both children and protected adults This exception to caring for protected adults relates to an activity involving caring for protected adults under the age of 18 which is merely incidental to caring for children generally. This application of the incidental test is different to the others, which apply it to the population in general because receipt of a care service makes an individual a protected adult. This exception excludes from regulated work with adults work which primarily involves caring for children.

**Example Regulated Work with Protected Adult Case Studies**

**Case study**

**Chemotherapy patient**

A. Lynn is receiving chemotherapy in cycles of one month of treatment followed by one month without treatment. She is a day patient and living in her own home. John is contracted by the Health Board to transport Lynn and other patients like her between her home and the hospital.

B. Assessment:

1. John is doing work.

2. John is providing a health support service secured by a public health body. Receipt of this service means that the patients are protected adults when in his vehicle.

3. John is in sole charge of protected adults (as they cannot leave his vehicle unless he allows them to do so).

4. It is his normal duties.

5. No exceptions apply. His being in sole charge of protected adults is not incidental as it is his provision of the service to them which makes them protected adults.

C. Answer: John is doing regulated work with adults.

**Case study**

**The bowling club**

A. Thomas runs the local bowling club as a volunteer, managing admission, mowing the lawn and doing whatever needs to be done. It is open to the general public, although the members are mainly elderly people.

B. Assessment:

1. Thomas is working.

2. It is possible that he may be working with children (although this is unlikely). He is not providing a service, receipt of which makes an individual a protected adult.

3. He is not undertaking any specified activity, nor working in a specified establishment nor position which would fall within regulated work. It is not necessary to consider steps 4 and 5.

C. Answer: Thomas is not doing regulated work.

**Case study**

**Bowling for visually impaired people**

A. Kathleen gets together a group of volunteers and they advertise a series of events to encourage blind or visually impaired adults to learn to play bowls. Kathleen is doing this under the auspices of her local bowling club. The intention is that each adult learner will have a volunteer helper, who will teach and instruct them. Kathleen arranges basic training for the volunteers before the first event.

B. Assessment:

1. Kathleen and the volunteers are doing work.

2. Protected adults are not defined by any vulnerability but by the services they receive. The volunteers could only be providing a welfare service. The service they provide: is to individuals aged 16 or over; is delivered on behalf of an organisation (the bowling club); has required some basic training; is a series of publicised events (frequency and formality); and specifically for the blind (tailored to individuals’ needs). Kathleen is therefore providing a welfare service and working with protected adults.

3. The volunteers are teaching and instructing protected adults.

4. It is their normal duties because it is their principal role in this volunteer work.

5. It is not incidental to teaching or instructing individuals who are not protected adults.

C. Answer: Kathleen and the volunteers are doing regulated work with adults.

**Case study**

**The Manager**

A. Joe works for a voluntary organisation which provides a befriending service. He does not do any befriending himself but he meets regularly with volunteers who do and is responsible for their training, well-being and is the person to whom they should report any concerns.

B. Assessment:

1. He is doing work.

2. He is working with protected adults (as these befrienders are providing a welfare service).

3. He is not carrying out any of the specified activities or working in a specified establishment. However, his duties indicate that he has day to day responsibility for supervising and managing the volunteer befrienders.

4. It is his normal duties.

5. No exceptions apply.

C. Answer: Joe is doing regulated work with adults.

**Case study**

**Yoga teacher**

A. Rebecca takes Yoga classes in her local scout hall and offers Yoga to adults in the community.

B. Assessment:

1. She is doing work.

2. She is not working with children. She is not providing a health, care or welfare service. She is not working with protected adults. It is not necessary to consider steps 3 to 5.

C. Answer: Rebecca is not doing regulated work.

**Case study**

**A dental practice**

A. A small dental practice has a dentist, a dental hygienist and a receptionist.

B. Assessment:

1. All are doing work.

2. All are working with children. In providing treatment to patients, both the dentist and dental hygienist are providing a health service, receipt of which means makes a person over 16 a protected adult.

3. The dentist and dental hygienist are providing care to children and protected adults. The dentist and dental hygienist also have unsupervised contact with children under arrangements made by a responsible person (the child’s parent). But the receptionist is not providing a health service nor has any caring responsibility nor has unsupervised contact with the children.

4. What they do, in all cases, is their normal duties.

5. There are no exceptions: the care provided to children is not incidental.

C. Answer: The dentist and dental hygienist are doing regulated work with children and regulated work with adults. The receptionist is doing neither (but is eligible for standard disclosure).

**Case study**

**The Pilates teacher in a care home**

A. Jan teaches Pilates classes in a care home. She is paid by individual residents. Jan’s class is always supervised by someone from the care home who is doing regulated work with adults.

B. Assessment:

1. Jan is doing work.

2. Residents in the care home are protected adults by virtue of receiving a care home service. Jan is working with protected adults (irrespective of what she does).

3. Jan is teaching protected adults. She is also working in a specified establishment (a care home).

4. It is her normal duties.

5. As she is supervised by somebody doing regulated work, she is not doing regulated work by virtue of being in the care home (she does not have the opportunity for unsupervised contact) but she is teaching protected adults and this is not incidental to teaching individuals who are not protected adults.

C. Answer: Jan is doing regulated work with adults.

**Case study**

**The Pilates teacher**

A. Jan offers a series of Pilates classes to the general public in a local church hall. The class attracts members of the public and some care home residents, from the home just round the corner.

B. Assessment:

1. Jan is doing work.

2. She is potentially working with children. She is not working with protected adults because the care home residents are not receiving a care home service at the time when Jan interacts with them (because they are outside the care home) nor is Jan providing a service receipt of which makes a person a protected adult.

3. She is potentially teaching children.

4. It is her normal duties.

5. Despite the fact that some children may attend the classes, teaching them is incidental to the teaching of the public in general.

C. Answer: Jan is not doing regulated work.

**Case study**

**Help to live at home**

A. A support worker, Joanna is employed by a local council to help adults to continue to live at home. Joanna makes meals and does other jobs around people’s houses, for which she has received some basic training.

B. Assessment:

1. Joanna is doing work.

2. Joanna is potentially providing a welfare service, receipt of which would make an individual a protected adult. The service she provides: is to individuals aged 16 or over; is delivered on behalf of an organisation (the local council); has required some basic training; is regular and by arrangement (frequency and formality); and is tailored to individuals’ needs. Joanna is therefore providing a welfare service and working with protected adults. For the period that Joanna is in their homes, the adults are protected adults.

3. She cares for protected adults.

4. It is her normal duties.

5. Her caring for protected adults is not incidental as it is her provision of the service to them which makes them protected adults.

C. Answer: Joanna is doing regulated work with adults.