

Disclosure and Barring in Northern Ireland

- Working with Children and Young People

Context

The Safeguarding Vulnerable Groups (NI) Order 2007, as amended by the Protection of Freedoms Act 2012 defines '**regulated activity**' with children and adults. Regulated activity is work which a **barred person** must not undertake. It is a criminal offence for a barred person to seek or undertake work from which they are barred, and it is an offence for organisations to 'knowingly employ' a staff member or involve a volunteer in regulated activity if they are barred.

Definition of regulated activity relating to CHILDREN AND YOUNG PEOPLE

From 10 September 2012 regulated activity relating to children includes:

- 1 Unsupervised activities: teaching, training, instructing, caring for or supervising children, providing advice/guidance on well being, driving a vehicle only for children;
- 2 Work for a limited range of establishments (specified places) with opportunity for contact with children for example schools, children's homes, childcare premises, children's hospitals. Work undertaken by supervised volunteers in these places is not regulated activity.

Work under 1 or 2 is regulated activity if undertaken **regularly**. Regular means carried out by the same person frequently (once a week or more) or on four or more days in a 30 day period or overnight.

- 3 Relevant personal care, for example washing or dressing, or health care by or supervised by a professional (even if carried out once);
- 4 Registered childminding and foster care.

Note: the day to day line manager/supervisor of an individual in regulated activity is also in regulated activity.

Implications

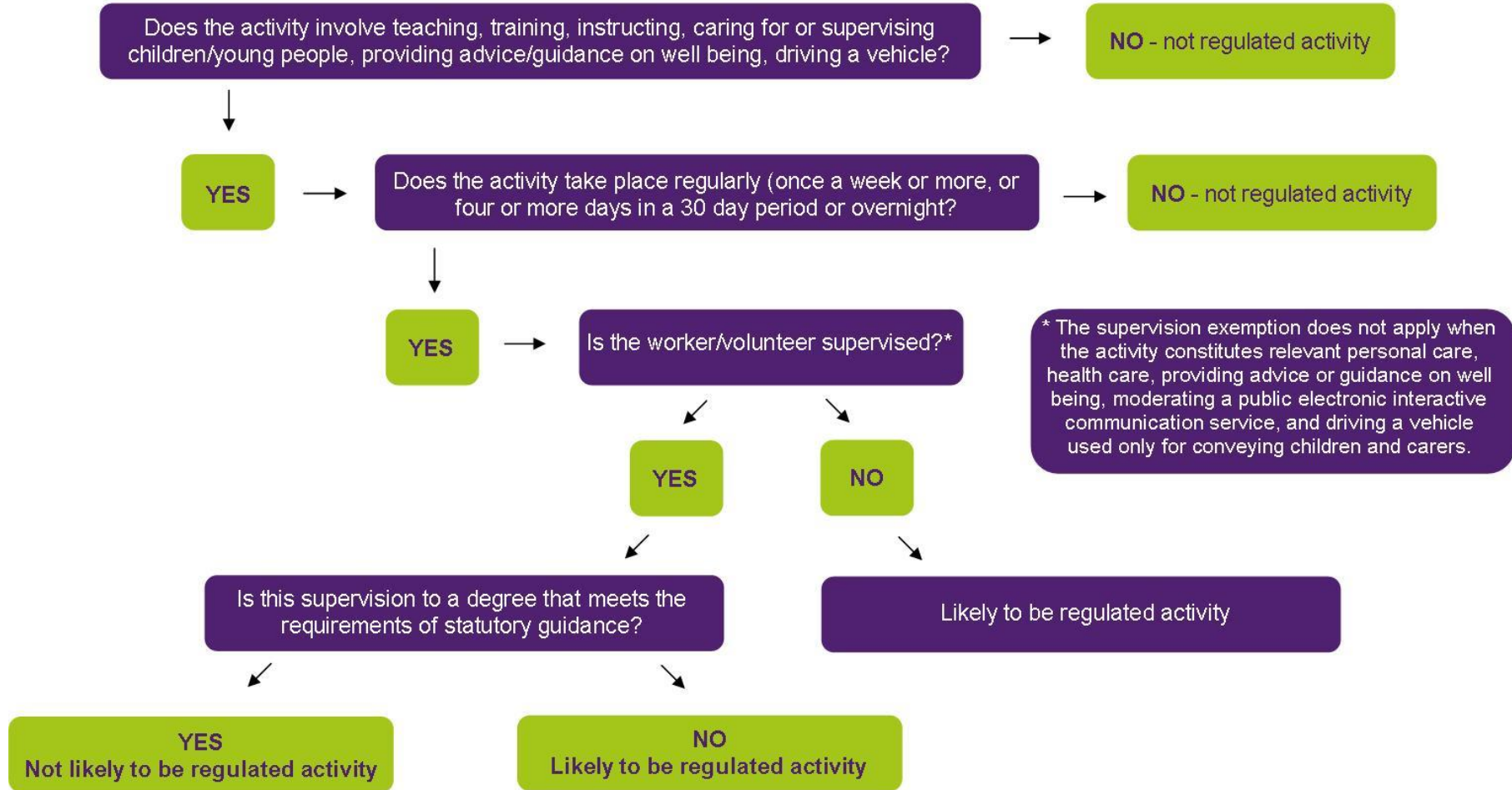
If a post meets the definition of regulated activity, organisations must request an Enhanced Disclosure **with** Barred List check through AccessNI on the preferred candidate prior to confirming an offer of work/volunteering. If not barred, the organisation will use its discretion regarding any criminal history information which may be contained on the Disclosure certificate.

The following chart will help you decide if the post working with children and young people is regulated activity.

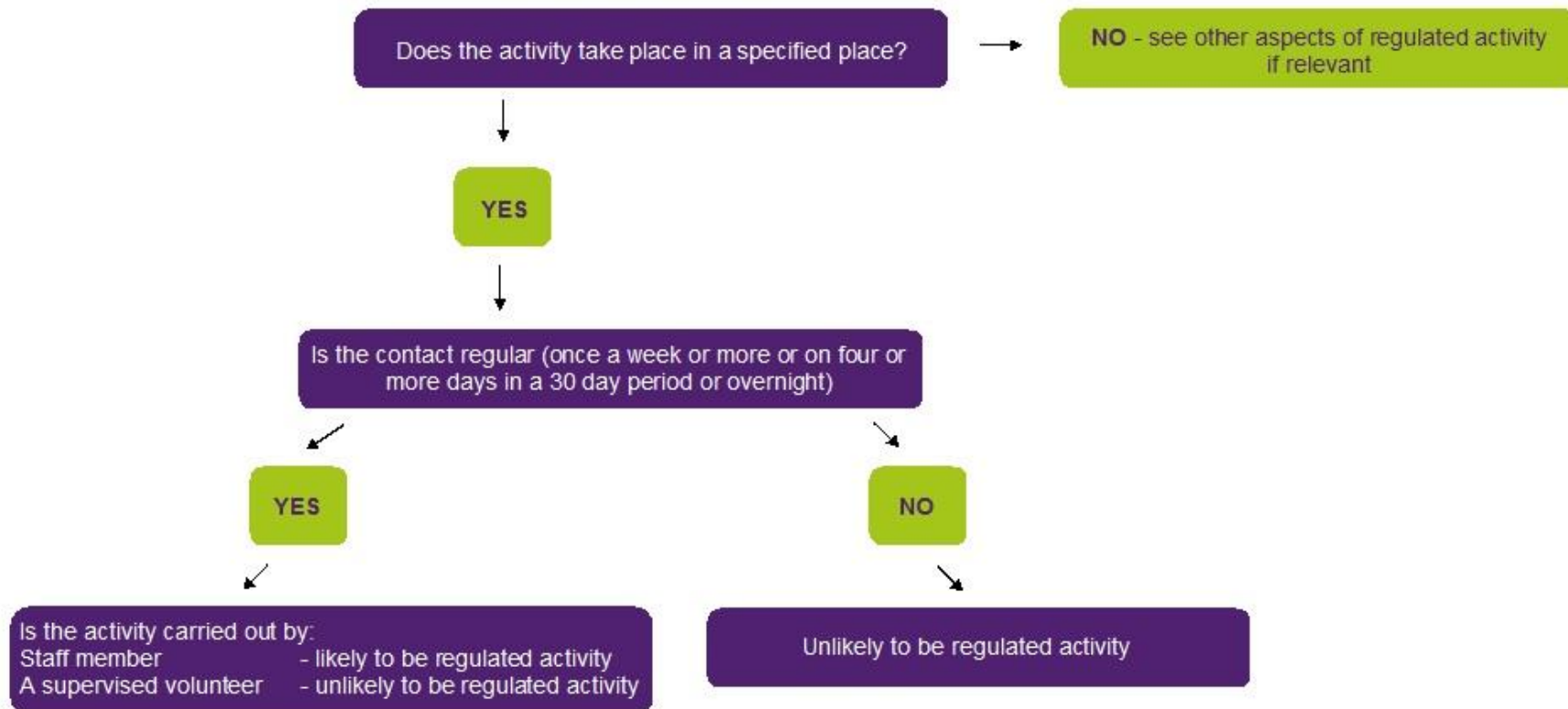
Regulated Activity (children)

Some questions to consider

Strand 1: Unsupervised activities: teaching, training, instructing, caring for or supervising children, or providing advice/guidance on well-being, or driving a vehicle only for children.



Strand 2: Work for a limited range of establishments ('specified places'), with opportunity for contact: e.g. schools, children's homes, childcare premises, a children's hospital but not work by supervised volunteers in those places.



For full details of the scope of regulated activity in relation to children please see factual note from HM government at **Appendix 1**.

See also **Disclosure and Barring in Northern Ireland - Working with Adults**

Supervised Activity with Children and Young People – A guide to good practice

Contained within the new definition of regulated activity with children is the concept of supervision. Posts which are supervised to the level described by Government in the document, “Statutory guidance: Regulated Activity (children) – supervision of activity with children which is regulated activity when unsupervised”¹, are now outside the scope of regulated activity and are therefore ineligible for an Enhanced Disclosure with Barred list check. However, it remains possible to obtain Enhanced Disclosures (without Barred list) checks on supervised posts and other posts which would have been in regulated activity prior to 10 September 2012. It is acknowledged that only a limited number of volunteering posts will be supervised to the level required by the Government guidance.

1. How will organisations decide if a post is unsupervised or supervised?

When an organisation decides to supervise a person with the aim that the supervised work will not be regulated activity the law makes three main points:

- there must be supervision by a person who is in regulated activity;
- the supervision must be regular and day to day; and
- the supervision must be “reasonable” in all the circumstances to ensure the protection of children.

2. How might the statutory guidance on supervised activity be interpreted?

All organisations must have regard to the statutory guidance referenced in this guidance, and may wish to consider the points below in relation to supervision issues in the voluntary and community sector. The introduction of the term “supervision” is intended to give local managers and supervisors the flexibility to determine what is reasonable and regular for their circumstances. The precise nature and level of supervision will vary from case to case, good practice guidance on the main legal points above include:

- Supervision of the individual is provided by a person in regulated activity in a more senior position than the individual. Peer to peer supervision does not mean the individual is in a formally supervised position.
- Supervision is regular and day to day, i.e. that supervision must take place “on a regular basis”. This means that supervision must not, for example, be concentrated during the first few weeks of an activity and then tail off thereafter, becoming the exception rather than the rule. It must take place on an on-going basis, whether the worker has just started or has been doing the activity for some time. It must be consistent and on every occasion the individual is working/volunteering.
- Supervision must be reasonable in all the circumstances for the purposes of safeguarding children and young people. Organisations must consider whether they can implement a consistent level of supervision at all times to ensure that it would not impact on the safety and protection of children and young people in the care of the organisation if a Barred individual was in this “supervised” position.

¹ <http://media.education.gov.uk/assets/files/pdf/s/supervision%20guidance%20revised%20sos%20sept%202012.pdf>

3. Additional notes:

Organisations may also wish to consider the following:

- the 'supervision' or monitoring of workers on a day to day basis is in addition to any formal support and supervision processes that are in place as part of the effective management of staff and volunteers. If this is not the case the post does not meet the supervision exemption and must be treated as a regulated activity;
- supervision is constant during all activities;
- the location of the activity can facilitate robust supervision of the worker (for example one senior worker responsible for 4 youth workers in separate rooms in a community centre would not constitute constant supervision therefore the 4 workers and the senior youth worker would all be in regulated activity);
- the level of supervision in place adequately protects children in the event of unforeseen or unexpected events;
- good safeguarding practice is observed. This is essential, regardless of the information obtained through a pre-employment vetting check. Organisations should ensure that they have a safeguarding children and young people policy which meets the minimum standards of good practice in 'Keeping Children Safe: Our Duty to Care' (as endorsed by DHSSPS) and are maintaining the highest level of policy implementation.

4. Some examples to consider:

After Schools Assistant

After schools assistants will work closely with other staff and volunteers to provide a fun environment for children from the local community to interact and play. Volunteers will help with setting out games, playing with and supervising the children. The commitment is one afternoon per week.

- This role is unlikely to meet the definition of regulated activity if the volunteer is supervised during each session by a more senior worker who is in regulated activity and both the worker and volunteer are always in the same room.

Youth Worker

Volunteers give very valuable support each week to youth workers in the provision of educational and fun activities for children in a local Junior Youth Club. Volunteers also enjoy helping with outings and special events.

- This role is unlikely to meet the definition of regulated activity if the volunteer is supervised during each session by a more senior youth worker who is in regulated activity and both the worker and volunteer are always in the same room.

Community Support Volunteers

Community Support Volunteers help children with learning disabilities to get involved in their local community. The role may include sharing a hobby or interest, learning a new skill, shopping, going to the cinema, enjoying sports or chatting over a coffee. The role will be undertaken once a week.

- This role is likely to meet the definition of regulated activity as the volunteer is caring for or supervising a child (under 18 years), it is unsupervised activity and is undertaken regularly.

Useful links and contacts:

Department of Health, Social Services and Public Safety

www.dhsspsni.gov.uk

Disclosure and Barring Service

www.gov.uk/government/organisations/disclosure-and-barring-service

AccessNI

www.nidirect.gov.uk/accessni

Volunteer Now

www.volunteernow.co.uk

info@volunteernow.co.uk

Appendix 1

Regulated Activity in Relation to Children: Scope

Factual note by HM Government

Regulated activity is work that a barred person must not do. This note provides information on the scope of Regulated Activity in relation to children, defined in the Safeguarding Vulnerable Groups (SVG) Act 2006 and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, both as amended (in particular by, respectively, section 64 and Schedule 7, Protection of Freedoms Act 2012). This note is about the law in England and Wales, and in Northern Ireland.

This note comprises (I) a short summary, and (II) a full description.

Regulated activity still excludes family arrangements; and personal, non-commercial arrangements.

(I) Summary

The new definition of regulated activity (i.e. work that a barred person must not do) in relation to children comprises, in summary:

(i) unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice/ guidance on well-being, or drive a vehicle only for children;

(ii) work for a limited range of establishments ('specified places'), with opportunity for contact: e.g. schools, children's homes, childcare premises. Not work by supervised volunteers;

Work under (i) or (ii) is regulated activity only if done regularly: "regularly" is defined in detail on the following pages under items (a) to (f).

HM Government is publishing statutory guidance on supervision of activity that would be regulated activity if unsupervised.

(iii) relevant personal care, e.g. washing or dressing; or health care by or supervised by a professional;

(iv) registered childminding; and foster-carers.

A full detailed description of the above scope follows below.

(II) Full description of scope

Part 1: Regulated Activity for children – Activities

Part 2: Regulated Activity for children – Establishments

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 or 2007 Order as amended before the 2012 Act, or in secondary legislation under it.

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 ¹ :	
<p>(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*.</p> <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised. <i>Para 1(15)</i>.</p> <p>*Sources: - <i>once a week: guidance, March 2010, Annex B, page 70 para B.12;</i> - <i>four or more days/ overnight: Schedule 4, para 10(1) as amended.</i></p>	<p>New:</p> <ul style="list-style-type: none"> • Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. <i>Para 2(3A)</i>. <p>Existing:</p> <ul style="list-style-type: none"> • 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.

References to “Schedule 4” should be read as “Schedule 2” in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (SVG Order).

² Para 1(13) in the SVG Order.

Activity	Exceptions – not Regulated Activity
<p>(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.</p> <ul style="list-style-type: none"> • See rows (i) to (iii) below re types of care. <p>Day to day management or supervision on a regular basis of a person providing this activity which would be regulated if unsupervised.</p>	<p>New:</p> <ul style="list-style-type: none"> • Supervised activity - under reasonable day to day supervision by another person engaging in regulated activity. <i>Para 2(3B)(b)</i>. <p>Existing:</p> <ul style="list-style-type: none"> • 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.
<p>Particular types of care within (b) above, which apply to any child, even if done only once: (i) to (ii) below.</p>	
<p>(i) Relevant personal care. <i>Para 1(1B)</i>: (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).</p>	
<p>(ii) Health care. <i>Para 1(1C)</i>: All forms of health care relating to physical or mental health including palliative care and procedures similar to medical or surgical care.</p>	<p>New:</p> <ul style="list-style-type: none"> • Health care not by, or directed or supervised by, a health care professional*. <i>Para 2(3B)(a)</i>. <p>*Defined by reference to regulatory bodies. <i>Para 1(1C)</i>.</p>
<p>(c) Advice or guidance provided wholly or mainly for children relating to their physical, emotional or educational wellbeing 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.</p>	<p>New:</p> <ul style="list-style-type: none"> • Legal advice. <i>Para 2(3C)</i>; <p>Existing:</p> <ul style="list-style-type: none"> • Activity relating to a child in course of his employment, not by person for whom arrangements exist principally for that purpose.

(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. <i>Schedule 4, Para 10(2).</i>	
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Activity	Exceptions – not Regulated Activity
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: <ul style="list-style-type: none"> • Activity by a person who does not have access to the content of the matter, or contact with users.
(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 ³	

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 ⁴ *That is: on domestic premises, for reward; as opposed to “childcare premises”, part 2 below.	
(5) Fostering** a child. **Defined at section 53 ⁵	Existing: <ul style="list-style-type: none"> • Care arranged by family members and not for reward is not regulated activity. <i>Section 53(*)</i>⁶. <p>Local Authority can foster child with barred person who is, or lives with, a relative of the child. SI 2009-1797, Art 3(2).</p>

³ In Northern Ireland: Statutory Rule S.R. 2009/306.

4 In Northern Ireland: requirement to register is provided for under Children (Northern Ireland) Order 1995.

5 In Northern Ireland: Article 55, SVG Order 2007.

6 In Northern Ireland: family or personal relationships are exempt under Article 3, SVG Order 2007.

Activity	Exceptions – not Regulated Activity
<p>(6) & (9) to (13)^{***}: Wales only:</p> <ul style="list-style-type: none"> • child minding with requirement to register under Children Act 1989 including activities that require registration if child under eight; • functions of Children’s Commissioner for Wales and deputy; • inspection functions in relation to education, training, childcare and children’s health or social care. <p>^{***}In Northern Ireland: (6), (6A), (7A) & (8):</p> <ul style="list-style-type: none"> • Guardians Ad Litem; • Controllers appointed under Mental Health (NI) Order 1986; • Inspection/ Registration functions in education, training, juvenile justice, childcare, and children’s health or social care. 	
<p>(14)⁷ 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:</p> <ul style="list-style-type: none"> - at (a) to (f) above; <p>or</p> <ul style="list-style-type: none"> - in establishments in part 2 below; <p>and</p> <ul style="list-style-type: none"> - (9C) or (11) in Wales only. 	

7 In Northern Ireland: Para 12 of Schedule 2 in SVG Order 2007.

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.

Establishment	Exceptions – not Regulated Activity
<p>Schedule 4, para 3(1):</p> <p>(a) schools (all or mainly full-time, for children); (aa) pupil referral units (also known as Short Stay Schools) not falling within the above; (b) nursery schools; (d) institutions for the detention of children; (e) & (f) children’s homes; (fa) children’s centres in England; (g) childcare premises (including nurseries).</p> <p>Day to day management or supervision on a regular basis of a volunteer activity which would be regulated if unsupervised. <i>Para 1(15).</i></p> <p>In Northern Ireland (under Schedule 2, Para 3(1) of the SVG Order): (a) schools (all or mainly full-time, for children); (b) nursery schools; (bb) Alternative Education Provision; (c) a children’s hospital; (d) institutions for the detention of children; (e) children’s homes; (f) childcare premises.</p> <p>In Northern Ireland: day to day management or supervision on a regular basis of a volunteer activity which would be regulated if unsupervised. <i>Para 1(13).</i></p>	<p>New:</p> <ul style="list-style-type: none"> • 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). <p>Existing:</p> <ul style="list-style-type: none"> • 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.

Note: Categories for office holders (“Positions” - Para 1(9) and Para 4) and for Inspectorates in England (sub-paragraphs of Para 1) are removed. In Northern Ireland, categories for office holders (“Positions” – Para 1(7) and Para 4) are removed.

Department for Education and Department of Health, Social Services and Public Safety (Northern Ireland), June 2012.

Appendix 2

Statutory guidance: Regulated Activity (children) - supervision of activity with children which is regulated activity when unsupervised

1. This document fulfils the duty in legislation* ** that the Secretary of State must publish statutory guidance on supervision of activity by workers with children, which when unsupervised is regulated activity. This guidance applies in England, Wales and Northern Ireland. It covers settings including but not limited to schools, childcare establishments, FE colleges, youth groups and sports clubs.

2. For too long child protection policy has been developed in haste and in response to individual tragedies, with the well-intentioned though misguided belief that every risk could be mitigated and every loophole closed. The pressure has been to prescribe and legislate more. This has led to public confusion, a fearful workforce and a dysfunctional culture of mistrust between children and adults. This Government is taking a different approach.

3. We start with a presumption of trust and confidence in those who work with children, and the good sense and judgment of their managers. This guidance applies when an organisation decides to supervise with the aim that the supervised work will not be regulated activity (when it would be, if not so supervised). In such a case, the law makes three main points:

- there must be supervision by a person who is in regulated activity***
- the supervision must be regular and day to day; and ;
- the supervision must be “reasonable in all the circumstances to ensure the protection of children”.

The organisation must have regard to this guidance. That gives local managers the flexibility to determine what is reasonable for their circumstances. While the precise nature and level of supervision will vary from case to case, guidance on the main legal points above is as follows.

4. Supervision by a person in regulated activity / regular and day to day: supervisors must be in regulated activity themselves**** supervision must take place “on a regular basis” means that supervision must not, for example, be concentrated during the first few weeks of an activity and then tail off thereafter, becoming the exception not the rule. It must take place on an ongoing basis, whether the worker has just started or has been doing the activity for some time.

5. Reasonable in the circumstances: within the statutory duty, the level of supervision may differ, depending on all the circumstances of a case. Organisations should consider the following factors in deciding the specific level of supervision the organisation will require in an individual case:

- ages of the children, including whether their ages differ widely;
- number of children that the individual is working with;

- whether or not other workers are helping to look after the children;
 - the nature of the individual's work (or, in a specified place such as a school, the individual's opportunity for contact with children);
 - how vulnerable the children are (the more they are, the more an organisation might opt for workers to be in regulated activity);
 - how many workers would be supervised by each supervising worker.
5. In law, an organisation will have no entitlement to do a barred list check on a worker who, because they are supervised, is not in regulated activity.

EXAMPLES

Volunteer, in a specified place Mr Jones, a new volunteer, helps children with reading at a local school for two mornings a week. Mr Jones is generally based in the classroom, in sight of the teacher. Sometimes Mr Jones takes some of the children to a separate room to listen to them reading, where Mr Jones is supervised by a paid classroom assistant, who is in that room most of the time. The teacher and classroom assistant are in regulated activity. The head teacher decides whether their supervision is such that Mr Jones is not in regulated activity.

Volunteer, not in a specified place Mr Wood, a new entrant volunteer, assists with the coaching of children at his local cricket club. The children are divided into small groups, with assistant coaches such as Mr Wood assigned to each group. The head coach oversees the coaching, spends time with each of the groups, and has sight of all the groups (and the assistant coaches) for most of the time. The head coach is in regulated activity. The club managers decide whether the coach's supervision is such that Mr Wood is not in regulated activity.

Employee, not in a specified place Mrs Shah starts as a paid activity assistant at a youth club. She helps to instruct a group of children, and is supervised by the youth club leader who is in regulated activity. The youth club managers decide whether the leader's supervision is such that Mrs Shah is not in regulated activity.

In each example, the organisation uses the following steps when deciding whether a new worker will be supervised to such a level that the new worker is not in regulated activity:

- consider whether the worker is doing work that, if unsupervised, would be regulated activity. If the worker is not, the remaining steps are unnecessary;
- consider whether the worker will be supervised by a person in regulated activity, and whether the supervision will be regular and day to day, bearing in mind paragraph 4 of this guidance;

- consider whether the supervision will be reasonable in all the circumstances to ensure the protection of children, bearing in mind the factors set out in paragraph 5 of this guidance; and if it is a specified place such as a school:
- consider whether the supervised worker is a volunteer****.

Department for Education / Department of Health, Social Services and Public Safety (Northern Ireland), September 2012

*Safeguarding Vulnerable Groups Act 2006, amended by Protection of Freedoms Act 2012: Schedule 4, paragraph 5A: guidance must be “*for the purpose of assisting*” organisations “*in deciding whether supervision is of such a kind that*” the supervisee is not in regulated activity.

**Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, Schedule 2, paragraph 5A, is as above on guidance on “supervision” for Northern Ireland.

***If the work is in a specified place such as a school, paid workers remain in regulated activity even if supervised.

**** From 2013-14, the Government plans to commence a statutory duty on an organisation arranging regulated activity (under the 2006 Act or 2007 Order, both as amended) to check that a person entering regulated activity is not barred from regulated activity; and plans to commence a stand-alone barring check service by the new Disclosure and Barring Service.

*****A volunteer is: in England and Wales, a person who performs an activity which involves spending time, unpaid (except for travel and other approved out-of-pocket expenses), doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives; in Northern Ireland, a person engaged, or to be engaged, in an activity for a non-profit organisation or person which involves spending time unpaid (except for travel and other approved out-of-pocket expenses) doing something which amounts to a benefit to some third party other than, or in addition to, a close relative.