

# Chapter 2: Regulated Work

## 2.1- Introduction

1. This chapter explains the concept of regulated work in order to help individuals and organisations to decide which positions fall within the definition.
2. It is not possible to provide a definitive list of roles, positions or types of employment that constitute regulated work, not least because the structure and descriptions of peoples' work is constantly changing. Instead, the PVG Act defines regulated work by reference to: the activities that a person does; the establishments in which a person works; the position that they hold; or the people for whom they have day to day supervision or management responsibility. There are two types of regulated work:
  - regulated work with children; and
  - regulated work with adults.
3. The reason for having two types of regulated work, and two corresponding lists of individuals who are unsuitable to do such work, is to allow for the fact that unsuitability to work with one group does not always go hand in hand with unsuitability to work with the other (see chapter 8).
4. An individual may be doing both types of regulated work as part of the same job (e.g. doctor) or in different contexts (e.g. a teacher - doing regulated work with children - who volunteers with WRVS - doing regulated work with adults).
5. The Scottish Government believes that the definition of regulated work is broad enough to safeguard children and protected adults from unsuitable people who would harm them through their work, but narrow enough to be proportionate to this aim.

### ***Why does it matter if an individual is doing regulated work?***

6. It is an offence for an individual to do, or seek or agree to do, regulated work of the type from which they are barred. It is also an offence for an organisation to knowingly recruit an individual who is barred to do regulated work of the type to which the barring relates. However, it is a defence for the organisation to show that they did not know, and could not reasonably be expected to know, that the individual was barred. Conviction for either of these offences may result in a fine, imprisonment up to five years, or both.
7. Note that there is no equivalent offence for personal employers; they can ask anybody to do regulated work (but it would still be an offence for a barred person to do it).

8. In order to avoid committing the offence, organisations must work out whether or not the work they are asking an individual to do is regulated work and, if it is, should ask for one of the types of disclosure record discussed in chapter 1.

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

9. There are five steps to assessing whether an individual is doing regulated work:
  - (1.) **Is it work?** The meaning of work is explored in section 2.2.
  - (2.) **Who are they working with?** The definition of child and protected adult is set out in section 2.3.
  - (3.) **What do they do?** An explanation of regulated work with children is given at section 2.4 and regulated work with adults at section 2.5.
  - (4.) **Is it their normal duties?** The meaning of normal duties is elaborated at section 2.6.
  - (5.) **Are there any exceptions which apply?** There are some exceptions to what might otherwise be regulated work and these are explained at section 2.7
10. It is suggested that these five steps are always followed in making any assessment; this process is illustrated in the case studies featured in this chapter. Note that not all steps are required in all cases.

## **2.2 – Step 1: Work**

11. Work is defined at section 95 of the PVG Act and it has a very broad meaning as work of any kind. Work includes paid or unpaid work and other types of work. For the purposes of the PVG Scheme, being a foster carer is regarded as work. The carrying out of the functions of any statutory office is also work, as is caring for or supervising individuals who are participating in any organised activity. But work does not come within the scope of the PVG Scheme if it is done for an individual in the course of a family relationship; work also does not come within the scope of the PVG Scheme if it is done for an individual in the course of a personal relationship for no commercial consideration.
12. This means that a mother employing her brother to look after her child (a family relationship) does not constitute work for the purposes of the PVG Scheme, whether or not she pays her brother. However, a mother employing a friend to look after her child would not constitute work if there was no payment but, if the friend received payment, it would constitute work. In this latter case, it would be an offence for a barred individual to accept payment

from the mother for babysitting (because it is regulated work) but not for the mother to employ the barred individual (because she is a personal employer).

13. Where a protected adult intended to employ and pay a friend to be a carer, for example, then the friend would be doing work and similar considerations apply.
14. Family has its dictionary meaning and includes parents, aunts, uncles, grandparents, siblings, children and grandchildren etc. But family relationship also includes a relationship between two individuals who live in the same household and treat each other as though they were member of the same family<sup>1</sup>. This means that, for example, a child, his mother, her unmarried partner and his child all living in one house would all be regarded as having a family relationship.
15. With self-help or support groups, it is important to consider whether the individuals meet as friends to provide support and help to each other or whether it is a service provided by an organisation. A self-organised group of individuals getting together to support each other is not doing work. If the group asks an individual to lead it, the individual may be working (but the recipients will not be protected adults because the individual is not providing a care service of the type which would make the individuals protected adults).

### **Case study C2.1**

#### **Children's Football Team – transport**

A. Juan watches his son's under 18s football team play every Saturday and has got to know some of the other parents. He has arranged with them to transport their children to the away games.

B. Assessment:

1. He is not working for the purposes of the PVG Scheme, as it is being done in the course of a personal relationship.

It is not necessary to consider steps 2 to 5.

C. Answer: Juan is not doing regulated work with children.

### **Case study C2.2**

#### **Children's Football Team – transport**

A. Sayed has been asked to help out at his son's under 18s football team. The team's coach has arranged for Sayed to transport some of the team every second Saturday to the away games.

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<sup>1</sup> Section 95(5) of the PVG Act.

- B. Assessment:
1. Sayed is doing work because he has been asked to transport the children by the team coach. He is doing work even if some of the children are the children of friends or family.
  2. Sayed is working with children.
  3. Sayed is in sole charge of children when transporting them.
  4. It is his normal duties (because he has made an arrangement to do this).
  5. No exceptions apply.
- C. Answer: Sayed is doing regulated work with children.

### **Case study C2.3**

#### **Family**

A. Jane has two children and Jane's sister, Helen, has one child. Jane and Helen run a family shop and work three days each per week. On the three days that Jane does not work, she looks after her own children and her nephew, and Helen reciprocates when Jane is working.

- B. Assessment:
1. Jane and Helen and their respective children are in a family relationship. Work done in the course of a family relationship is not work for the purposes of the PVG Scheme.
- It is not necessary to consider steps 2 to 5.
- C. Answer: Neither Jane nor Helen is doing regulated work with children.

### **Case study C2.4**

#### **Friends**

A. Jane and Helen ask a family friend, Jemima, to look after their children on days when neither can care for their children. Jane and Helen pay Jemima for child care.

- B. Assessment:
1. Although the work is done in the course of a personal relationship (a friend), the fact that Jemima is paid, means that she is doing work within the terms of the PVG Scheme.
  2. She is working with children.
  3. She is caring for children.
  4. It is her normal duties because she has made an arrangement with Jane and Helen to do this.
  5. No exceptions apply.
- C. Answer: Jemima is doing regulated work with children.

## Case study C2.5

### Friends

- A. Helen has a friend Elaine. Elaine agrees to look after Helen's son on an occasional basis but is not paid for doing so.
- B. Assessment:
1. Elaine is not doing work because of the personal relationship between her and Helen, and the fact that no payment is being made to Elaine. It is not necessary to consider steps 2 to 5.
- C. Answer: Elaine is not doing regulated work with children.

## 2.3 – Step 2: Defining children and protected adults

16. The PVG Act provides for the protection of two vulnerable groups: children, and protected adults.

### **Child - definition**

17. Section 97 defines a child as an individual aged under 18 years.

### **Protected adult - definition**

18. Section 94 defines protected adult. A protected adult is defined as an individual aged 16 or over who is provided with (and thus receives) a type of care, support or welfare service. This definition of protected adult supersedes the definition of "adult at risk" used for the purposes of eligibility for enhanced disclosure<sup>2</sup>. To be classified as an adult at risk, an individual had to meet three criteria: having a condition, in consequence of which they had a disability and received a care service. Section 94 replaces these three criteria with a test linked to the type of services being received by the individual. Protected adult is therefore a service based definition and avoids labelling adults on the basis of their having a specific condition or disability.

### What services make a person a protected adult?

19. There are four categories of services receipt of any one of which makes an individual a protected adult<sup>3</sup>:

#### **1. Registered<sup>4</sup> care services**

A service by a person carrying on:

<sup>2</sup> Regulation 10(3) of the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006.

<sup>3</sup> See section 94 of the PVG Act and the Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Services) (Protected Adults) Regulations 2010 (SSI 2010/161).

<sup>4</sup> Registered under Part 1 of the Regulation of Care (Scotland) Act 2001.

- (a.) a support service,
- (b.) an adult placement service,
- (c.) a care home service, or
- (d.) a housing support service.

## **2. Health services**

A service provided or secured by a public health body<sup>5</sup> 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<sup>6</sup> provider.

## **3. Community care services**

Social work and mental health services provided or secured by a council, or self-directed support paid for by a council.

## **4. Welfare services**

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.

### More about welfare services

20. 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).
21. With regard to “training” (paragraph (c)), this test may be met by training which is not specialist or related to a professional qualification. As a matter of good practice, organisations asking their workers to provide welfare services should ensure that those workers have, at the very least, some basic training. For

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<sup>5</sup> Acting in exercise of functions conferred by the National Health Service (Scotland) Act 1978.

<sup>6</sup> Independent health care service is defined by sections 2(5) and 77 of the Regulation of Care (Scotland) Act 2001.

example, an organisation should train their workers to ensure that the worker is aware of:

- the worker's duties;
- the client's needs;
- the standards of conduct, any code of practice or statutory duties;
- how to escalate any concerns; and
- where to turn for advice or guidance.

22. A "frequency and formality attached to the service" (paragraph (d)) means that the worker delivering the service should not be merely doing so on an informal, unforeseen or ad hoc basis.
23. 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.

#### Other considerations

24. Most adults are likely to be a protected adult at some time in their lives, for example receiving treatment in hospital or receiving care in later life. But an individual is only a protected adult at the time they receive the service. For example, care home residents are protected adults at all times when they are in their care home. But other adults will only be protected for limited periods, for example, while receiving dental treatment.
25. This means that any services which are provided at times other than when the worker is present are not relevant to determining whether that worker is doing regulated work with adults. So there is no need to ask the adult any intrusive questions about their circumstances. For example, care home residents are protected adults at all times when they are in their care home, so any individual in contact with them is in contact with protected adults whatever the individual is doing. However, a person receiving outpatient chemotherapy is not a protected adult as a result of the treatment when they are not receiving that health service. So, for example, an individual providing other services to this person outside of the hospital context does not need to know about their outpatient chemotherapy to assess whether they are doing regulated work with adults or not.

### ***Child and protected adult overlap***

26. It is possible for 16 and 17 year-olds to be both children and protected adults. The assessment as to whether or not they are protected adults is no different to that undertaken in respect of any other adult.

#### **Case study C2.6**

##### **University Welfare Officer**

A. Alicia is a university welfare officer. Alicia provides advice, assistance and guidance to students. Alicia is working for a university and she has been trained specifically for the role she performs. Providing advice, assistance and guidance are Alicia's normal duties. She provides these services frequently and in a formal setting. Because Alicia deals with a range of different issues from students, her interaction with them is specific to individuals needs.

B. Assessment:

1. She is doing work.
2. She is working with children as some students are still under 18. She is providing a welfare service, the receipt of which makes an individual a protected adult (for the duration of the time she spends with them). So she is also working with protected adults.
3. She is caring for children and protected adults.
4. It is her normal duties.
5. Despite the fact that she is caring for some children, caring for them is incidental to the caring for adults. But she is caring for protected adults.

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

#### **Case study C2.7**

##### **Self-help Group**

A. Through a chance meeting on a bus, Derek and Dora get chatting. They discuss various things and realise that they both have the same minor health condition. This is being treated by their local GP but both agree that it was good to chat about it. They think that starting a self-help group might be beneficial. So they place an advert in their GP's practice and get six replies from strangers. They contact the respondents and invite them along to an evening at a local church hall, which Derek and Dora lead. The purpose of the group is to exchange information and learn from personal experiences.

B. Assessment:

1. Derek and Dora are doing work, as they are leading an event for strangers.
2. They are not working with children, nor are they providing a service the receipt of which would make the attendees protected adults.

It is not necessary to consider steps 3 to 5.

C. Answer: Derek and Dora are not doing regulated work.

### **Case study C2.8**

#### **The 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 C2.9**

#### **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 C2.10

### 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.

## 2.4 – Step 3: Regulated work with children

27. Regulated work with children is defined at schedule 2 of the PVG Act. This schedule was amended in the summer of 2010<sup>7</sup> and the amended version can be found at Annex A. The definitive reference point for regulated work with children is schedule 2 of the PVG Act (as amended) and this should be consulted in case of doubt. Schedule 2 was based on the definition of “child care position” in schedule 2 of POCSA but with a number of improvements, including clearer presentation and the introduction of the incidental test. It is important to note that by no means all individuals who come into contact with children through their work are doing regulated work with children.
28. This section focuses on work which may be within scope of regulated work with children:
  - (a) a position whose normal duties include carrying out particular activities;
  - (b) a position whose normal duties include work in particular establishments;

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<sup>7</sup> Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Children) Order 2010 (SSI 2010/240).

- (c) particular positions of trust or responsibility; or
- (d) a position whose normal duties include the day to day supervision or management of an individual doing regulated work with children by virtue of the activities the individual carries out or work the individual does in establishments.

29. It is important to read section 2.6 about normal duties and section 2.7 to see whether any of the exceptions apply. Note that normal duties qualifies: work carrying out activities; work in establishments; and day to day supervision or management of an individual carrying out those activities or working in those establishments. But it does not qualify the particular positions of trust and responsibility – an individual who works in one of those positions will always be doing regulated work. Where there are exceptions which apply to the type of work listed below, these are referenced by numbers in square brackets and further explanation can be found in section 2.7.

### **Activities**

30. An individual may be doing regulated work with children if their work involves any of the following activities (as part of their normal duties):
- Caring for children. [1], [2]
  - Teaching, instructing, training or supervising children. [1], [2]
  - Being in sole charge of children (see below). [1], [2], [3]
  - Unsupervised contact with children<sup>8</sup> under arrangements made by a responsible person (see below). [1], [2], [3]
  - Providing advice or guidance to a child or to particular children which relates to physical or emotional well-being, education or training (see below). [1], [2]
  - Moderating a public electronic interactive communication service which is intended for use wholly or mainly by children (see below).
  - Providing, or working for an organisation which provides, a care home service<sup>9</sup> which is provided exclusively or mainly for children. [4]
  - Providing, or working for an organisation which provides, an independent health care service<sup>10</sup> which is provided exclusively or mainly for children. [4]
  - Work on any part of day care premises<sup>11</sup> at times when children are being looked after in that part.
  - Being a host parent<sup>12</sup> (see below).

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<sup>8</sup> Defined at paragraph 1A of schedule 2 as amended.

<sup>9</sup> “Care home service” has the same meaning as in the Regulation of Care (Scotland) Act 2001.

<sup>10</sup> “Independent health care service” has the same meaning as in the Regulation of Care (Scotland) Act 2001.

<sup>11</sup> “Day care premises” means premises at which day care of children, within the meaning of section 2 of the Regulation of Care (Scotland) Act 2001, is provided.

<sup>12</sup> See paragraph 2A and 11A of schedule 2 as amended.

### Being in sole charge of children

31. Being in sole charge of children might include, for example: a contracted taxi or minibus driver taking children to school classes; the operator of a bouncy castle, where parents may be absent and the individual does have charge of what happens on the castle. It may also capture some aspects of school trips where a helper is not undertaking other kinds of activity which qualify as regulated work, for example escorting a group of children between venues.

### Unsupervised contact with children

32. Unsupervised contact with children under arrangements made by a responsible person is regulated work with children.
33. The PVG Act defines “unsupervised contact with children” to mean contact with children in the absence of—
  - (a.) a responsible person;
  - (b.) a person doing regulated work with children by virtue of caring, teaching, instructing, training, supervising or being in sole charge of children; or
  - (c.) an individual who, in relation to a child, has agreed to supervise the contact under arrangements made by the child’s parent or guardian or any person aged 18 or over with whom the child lives in the course of a family or personal relationship.
34. The PVG Act defines “responsible person” to mean, in relation to a child, any of the following persons—
  - (a.) the child’s parent or guardian;
  - (b.) any person aged 18 or over with whom the child lives;
  - (c.) the person in charge of any establishment in which the child is accommodated, is a patient or receives education (and any person acting on behalf of such a person);
  - (d.) a person who provides day care of children, within the meaning of section 2 of the Regulation of Care (Scotland) Act 2001;
  - (e.) any person holding a particular position of trust and responsibility; and
  - (f.) a charity trustee of a children’s charity.
35. Family relationship and personal relationship have the same meanings as in section 95 (meaning of "work").
36. Note that any contact with the child which is supervised by a person who has agreed to do so with the child’s parent, guardian or any other adult with whom the child lives is not unsupervised contact. The parent, guardian or adult resident must have agreed to the supervision of the contact by the friend or relative.

37. For example, suppose a voluntary organisation organises a pantomime trip by coach involving the organiser, adult A and the coach driver, adult B. If 30 children come along, 28 accompanied by a parent but two come unaccompanied, the provision referred to in paragraph 33(c) means that where the parents of those two children agree to nominate another person (perhaps another parent on the trip) to supervise their children in respect of contact with adults A and B that contact would not be unsupervised. This provision puts beyond doubt that no-one on the trip is doing regulated work with children, so long as each child is supervised either by a responsible person or by someone nominated by the responsible person for that child.
38. The meaning of “agreed” in the preceding example does not require such agreement to be in writing, but any organisation not requiring PVG Scheme membership on the basis of such agreement should make a contemporary record of it.

#### Providing advice or guidance to children

39. Providing advice or guidance to children covers positions such as workers on telephone advice lines and children’s magazine agony aunts. The provision does not cover general broadcasting to children, such as children’s television or radio programmes. Advice or guidance in relation to spiritual matters or spiritual well-being is considered to be captured by advice on emotional well-being and so is within the scope of this provision.

#### Moderating a public interactive communication service

40. The PVG Act states that a person moderates such a service if, for the purpose of protecting children, the person has any function relating to—
- (a) monitoring the content of matter which forms any part of the service,
  - (b) removing matter from, or preventing the addition of matter to, the service,
- or
- (c) controlling access to, or use of, the service.
41. But a person only moderates such a service as mentioned in sub-paragraph (b) or (c) if the person has—
- (i) access to the content of the matter, or
  - (ii) contact with users of the service.
42. This covers positions such as those involved in moderating Internet chat rooms intended for use by children where the individual has a role in protecting those children from harm. It does not cover incidental use by children of chat rooms intended for use by adults. It does not cover staff involved in maintaining and supporting such services whose function is not related to child protection, e.g. engineers.

### Being a host parent

43. Provision in respect of host parenting captures overnight accommodation provided in family homes as part of school exchange programmes and visits, trips or excursions arranged by many voluntary and private organisations. (Note that this does not include foster caring, for which specific provision is made elsewhere<sup>13</sup>.) Host parenting must fall within the definition of work, otherwise it cannot be regulated work (see section 2.2). So the provision applies both to arrangements made by a council, a charity or other organisation and to private hosting arrangements where this is for commercial consideration (that is, those made directly between the parent of the child and the host parent where this is not within the context of a family or personal relationship). But the provision does not apply to any arrangements made in the course of a family relationship (whether or not a payment is made) or in the course of a personal relationship for no commercial consideration, for example where the child stays over at a friend's house.
44. To be host parenting, the overnight accommodation has to be provided as if the child were part of that person's family. This excludes any person working in a hotel or B&B providing accommodation for children on a commercial basis on similar terms as they would for other clients.
45. The offences at sections 35 and 36 of the PVG Act do not apply to host parenting, as they do to other types of regulated work. This means that it is not an offence for an organisation to appoint a barred individual as a host parent but still allows organisations access to disclosure records, effectively making it a local policy decision as to whether or not to require such disclosure records from prospective host parents. Section 34 does still apply which means that it will always be an offence for an individual to work as a host parent if barred from doing regulated work with children. Organisations are still under the same duty to refer individuals who become unsuitable to be host parents as they are in respect of their employees and other workers (see chapter 6).
46. Individuals aged 16 or over living in the same household as the host parent(s) are not eligible for disclosures under the PVG Scheme but are eligible for enhanced disclosure<sup>14</sup>. In theory, the decision to check these individuals is not contingent upon the decision in respect of checking the host parent(s) but, in practice, there would need to be an extremely strong justification for checking these individuals if the host parent(s) themselves were not required to obtain a disclosure under the PVG Scheme.

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<sup>13</sup> At sections 95 and 96 and paragraph 26 of schedule 2 to the PVG Act.

<sup>14</sup> Under provision made in the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 (SSI 2010/168).

47. In the past, there has been a variation in approach by organisations across Scotland on the checking of host parents, which was justified to the extent that it was a result of applying POCSA (which made no specific reference to host parenting) to the different circumstances of each case.
48. The PVG Act effectively gives organisations a free hand in determining whether or not to require PVG Scheme membership or disclosure records for host parenting activities. But organisations should exercise their discretion using a risk-based assessment and ensure that the measures are even-handed and fair. Organisations should:
- apply coherent criteria to all potential host parents in the same way (i.e. not just require checks of only some parents who appear to be less suitable than others);
  - identify those criteria in advance and share them with potential host parents;
  - pay heed to any guidance or directions issued by relevant local bodies, such as local authorities; and
  - have regard to how other similar organisations manage similar host parenting activities.
49. Factors that organisations may wish to consider in determining whether to require PVG scheme membership for host parents include:
- the duration of the stay;
  - whether the children have the opportunity to meet responsible adults other than the host parents on a daily basis (i.e. the opportunity to report concerns about the host parent to another responsible adult);
  - the views of the “sending” organisation / parents of the children; and
  - the age and vulnerability of the children.
50. Organisations should be careful about assuming that just because an individual has children of their own or has done host parenting before that these factors alone make them suitable to do host parenting.

### ***Establishments***

51. An individual may be doing regulated work with children if they work in any of the following establishments(as part of their normal duties):
- An institution which is exclusively or mainly for the detention<sup>15</sup> of children. [6]
  - A hospital<sup>16</sup> which is exclusively or mainly for the reception and treatment of children. [6]
  - A school<sup>17</sup>. [6]

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<sup>15</sup> “Detention” means detention by virtue of an order of a court or under an enactment.

<sup>16</sup> “Hospital” has the meaning given by section 108(1) (interpretation) of the National Health Service (Scotland) Act 1978.

- A further education institution<sup>18</sup>. [6]
- A hostel used mainly by pupils attending a school or further education institution. [6]
- A home which is exclusively or mainly for children and is provided by a council under social work<sup>19</sup> or mental health legislation<sup>20</sup>. [6]

52. One exception applies to positions in all these establishments, namely that such positions are not regulated work unless doing anything permitted or required in connection with the position gives the person the opportunity to have unsupervised contact with children. This is explained in section 2.7.

### **Positions**

53. An individual is doing regulated work with children if they hold any of the following positions (note there is no normal duty qualification or other exceptions which apply):
- Manager, or member of a governing body, body of trustees or other body responsible for the management, of a school, further education institution or hostel – as defined in establishments (but not a member of a council).
  - Member of certain<sup>21</sup> council committees, joint committees or sub-committees concerned with the provision of education, accommodation, social services or health care services to children,
  - Member of a children’s panel or certain<sup>22</sup> related committees.
  - Chief social work officer of a council.
  - Chief education officer (however called) of a council.
  - Commissioner for Children and Young People in Scotland or member of that Commissioner’s staff.
  - Registrar of Independent Schools in Scotland.
  - Foster carer<sup>23</sup>.
  - Charity trustee of a children’s charity (see below).
54. These positions cover work which might not otherwise be regulated work. These are positions which, by their very nature, put the post-holder in a position of power and trust in respect of children and those who work with children and could enable the post-holder to demand access to children. Additionally, some of these positions give the post-holder the power to

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<sup>17</sup> “School” has the same meaning as in the Education (Scotland) Act 1980

<sup>18</sup> “Further education institution” means a body listed under the heading “Institutions formerly eligible for funding by the Scottish Further Education Funding Council” in schedule 2 to the Further and Higher Education (Scotland) Act 2005.

<sup>19</sup> Section 59 (provision by councils of residential and other establishments) of the Social Work (Scotland) Act 1968.

<sup>20</sup> Section 25 (provision of care and support services by local authority) of the Mental Health (Care and Treatment) (Scotland) Act 2003.

<sup>21</sup> See paragraph 19 of schedule 2 for full details.

<sup>22</sup> See paragraph 20 of schedule 2 for full details.

<sup>23</sup> See paragraph 26 of schedule 2 and definition of foster carer at section 96 of the PVG Act.

influence or determine recruitment decisions or organisational policy and practice. A post-holder in one of these positions is doing regulated work with children without exception (i.e. there is no normal duties test and it is immaterial whether or not the post-holder is or is not covered by any other provision).

### Charity trustee

55. All trustees of children's charities are doing regulated work. The PVG Act defines a children's charity<sup>24</sup> as a charity whose—
  - (a.) main purpose is to provide benefits for children, and
  - (b.) principal means of delivery of those benefits is by its workers doing regulated work with children.
56. An individual works for a charity if the individual works under any arrangements made by the charity.
57. The main purpose of including "children's charity" trustees within the scope of regulated work is because of the trust and access to children *within and beyond the work of the charity itself* which that position confers or would be assumed to confer by a lay person.
58. The definition excludes Higher Education Institutions. It also excludes all charities whose main purposes are aimed at adults or the population more generally. Finally, it excludes charities which deliver "indirect" benefits only, such as financial, legal or medical research. The definition of children's charities covers those charities which would most commonly be thought of as such.

### ***Day to day supervision or management of workers doing activities or in establishments***

59. An individual may be doing regulated work with children 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.
60. 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.

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<sup>24</sup> Paragraph 27 of schedule 2.

61. 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

62. 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.
63. 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.

#### **Case study C2.11**

##### **Further Education College - Day Lecturer**

A. Katrine is employed as a lecturer for day classes only at a Further Education College.

B. Assessment:

1. Katrine is doing work.
2. She is working with children.
3. She is teaching them.
4. It is her normal duties.

5. The classes are targeted at children so the incidental exception does not apply.

C. Answer: Katrine is doing regulated work with children.

### **Case study C2.12**

#### **Further Education College - Janitor**

A. Jon is employed as a janitor at a Further Education College.

B. Assessment:

1. Jon is doing work.
2. He is working with children.
3. He is not carrying out any of the specified activities but he does work in a specified establishment.
4. It is his normal duties.
5. He does have the opportunity for unsupervised contact with children when doing anything permitted or required on connection with his position.

C. Answer: Jon is doing regulated work with children.

### **Case study C2.13**

#### **Children's Football Team – refreshments**

A. On a weekly basis Laura helps out with her daughter's football team. Laura's role is to issue refreshments to the players at half time and full time.

B. Assessment:

1. Laura is doing work.
  2. Laura is working with children.
  3. Laura is not doing any of the specified activities which fall within regulated work. She is not in sole charge of the children and she does not have unsupervised contact with the children. The serving of refreshments does not constitute "care".
- It is not necessary to consider steps 4 and 5.

C. Answer: Laura is not doing regulated work with children.

### **Case study C2.14**

#### **Classroom parent helper at school**

A. Ailsa has been asked to be a parent helper at school. Ailsa will be assisting in the classroom every Wednesday afternoon during topic time. The teacher will be in the class at the time but Ailsa will have responsibility for completing various activities with small groups of pupils.

- B. Assessment:
1. Ailsa is doing work.
  2. She is working with children.
  3. She is teaching and supervising children and working in specified establishment (school).
  4. It is her normal duties.
  5. She may not have the opportunity for unsupervised contact (depending on the arrangements made) but this is irrelevant as she is anyway carrying out specified activities of teaching and supervising children.
- C. Answer: Ailsa is doing regulated work with children.

## 2.5 – Step 3: Regulated work with adults

64. Schedule 3 of the PVG Act defines regulated work with adults. This schedule was amended in the summer of 2010<sup>25</sup> and the amended version can be found at Annex B. This definition replaces and expands the definition used for the purposes of eligibility for enhanced disclosure<sup>26</sup>. The criteria for enhanced disclosure for work with adults at risk were that the individual was working in a “position... *of a kind which enables [them] in the course of his or her duties to have contact with an adult at risk*”.
65. This section focuses on work which may be within scope of regulated work with adults:
- (a) a position whose normal duties include carrying out particular activities;
  - (b) a position whose normal duties include work in particular establishments;
  - (c) particular positions of trust or responsibility; or
  - (d) a position whose normal duties include the day to day supervision or management of an individual doing regulated work with adults by virtue of the activities the individual carries out or work the individual does in establishments.
66. It is important to read section 2.6 about normal duties and section 2.7 to see whether any of the exceptions apply. Note that normal duties qualifies: work carrying out activities; work in establishments; and day to day supervision or management of an individual carrying out those activities or working in those establishments. But it does not qualify the particular positions of trust and responsibility; an individual who works in one of those positions will always be doing regulated work. Where there are exceptions which apply to the type of

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<sup>25</sup> The Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Adults) Order 2010 (SSI 2010/245).

<sup>26</sup> Regulation 10(2) of the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (SSI 2006/96).

work listed below, these are referenced by numbers in square brackets and further explanation can be found in section 2.7.

67. Note that having access to financial or medical records or “sensitive” information is not regulated work (although may be eligible for standard disclosure).

### **Activities**

68. An individual may be doing regulated work with adults if their work involves any of the following activities (as part of their normal duties):
- Caring for protected adults. [5]
  - Teaching, instructing, training or supervising protected adults. [1]
  - Being in sole charge of protected adults. [1]
  - Providing assistance, advice or guidance to a protected adult or particular protected adults which relates to physical or emotional well-being, education or training. [1]
  - Inspecting adult care services<sup>27</sup> (including inspecting any premises used for the purposes of providing such services)

### **Sole charge of protected adults**

69. Remembering that for an individual to be a protected adult, they must be in receipt of a health, care or welfare service, there are only limited circumstances where an individual is likely to be doing regulated work with adults only by virtue of being in sole charge of protected adults. These circumstances are most likely to be community bus or contract taxi services delivered as part of a health, care or welfare service. The drivers of such vehicles, if the protected adult is unaccompanied by a relative or carer, are likely to be in sole charge of protected adults.

### **Establishments**

70. An individual may be doing regulated work with adults if they work in any of the following establishments (as part of their normal duties):
- 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<sup>28</sup>. [7]
  - A residential establishment or accommodation 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 social work<sup>29</sup> or mental health legislation<sup>30</sup>. [7]

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<sup>27</sup> “Adult care service” is defined at paragraph 6 of schedule 3.

<sup>28</sup> As defined in the Regulation of Care (Scotland) Act 2001.

<sup>29</sup> The Social Work (Scotland) Act 1968.

<sup>30</sup> Section 25 (provision of care and support services by local authority) of the Mental Health (Care and Treatment) (Scotland) Act 2003.

71. One exception applies to positions in all these establishments, namely that such positions are not regulated work unless:
- doing anything permitted or required in connection with the position gives the person the opportunity to have unsupervised contact with protected adults; and
  - any contact with protected adults, when the holder of the position is doing anything permitted or required in connection with the position, is more than incidental.
72. This is explained in section 2.7.

### **Positions**

73. An individual is doing regulated work with adults if they hold any of the following positions (note there is no normal duty qualification or other exceptions which apply):
- Member of certain<sup>31</sup> council committees, joint committees or sub-committees concerned with the provision of education, accommodation, social services or health care services to protected adults.
  - Chief social work officer of a council.
  - Charity trustee of certain charities (see below).

### **Charity trustee**

74. All trustees of certain charities as defined in the PVG Act are doing regulated work with adults. These charities are whose—
- (a.) main purpose is to provide benefits for protected adults, and
  - (b.) principal means of delivery of those benefits is by its workers doing regulated work with adults.
75. An individual works for a charity if the individual works under any arrangements made by the charity.
76. The provision mirrors that for regulated work with children (see section 2.4).

### ***Day to day supervision or management of workers doing activities or in establishments***

77. An individual may be doing regulated work with 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.

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<sup>31</sup> See paragraph 10 of schedule 3 for full details.

78. The discussion of day to day supervision and management in section 2.4 applies equally here.

### **Case study C2.15**

#### **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 C2.16**

#### **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 C2.17**

#### **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 C2.18**

#### **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 C2.19**

#### **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 C2.20**

#### **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.

### Case study C2.21

#### Counselling services

- A. David is a self-employed psychologist, offering counselling services to adults.
- B. Assessment:
1. David is doing work.
  2. David is, in effect an independent healthcare service provider providing care, advice and assistance to adults, thereby making them protected adults.
  3. David is providing both care and advice and assistance to protected adults.
  4. Even though he is self-employed, this is his (self-appointed) normal duties.
  5. His provision of care, advice and assistance to protected adults is not incidental as his provision of the service makes them protected adults.
- C. Answer: David is doing regulated work with adults.

## 2.6 – Step 4: Normal duties

79. 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.
80. 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.
81. No particular frequency for undertaking the work or duration of work are specified in the Act as these will depend on the context.
82. 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.
83. 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.

## **Examples**

84. The school plumber. The specific plumber identified in a building firm as the individual who always does work on school premises because he has specialist knowledge of the central heating systems would be regarded as having that function as part of his “normal duties”, even if actual callouts occur quite infrequently. But a random plumber called in to a school for one emergency in respect of whom no prior arrangements had been made would not be regarded as working in a school as part of his “normal duties”.
85. First aid. An individual with identified responsibility for administering first aid at, for example, school sports events would be regarded as having this as (part of) their normal duties, however infrequently their services were actually required. But it is not normal duties where an individual (whether staff or public) responds to an accident by providing first aid on the spur of the moment.
86. Santa Claus. An individual who spends the six weeks running up to Christmas dressed as Santa Claus and operating grottos in various locations would be regarded as having this as their normal duties. However, the member of staff who is asked by the store manager to be Santa for the morning in that store would not be regarded as having this as their normal duties. Obviously, there are simple practical measures around lines of sight etc with regard to the setting up of Santa’s grotto which can help to minimise any (perception of) risk.
87. Poet in a school. A parent who is a poet who offers to run a one-off class on poetry for their child’s school (or any other school) would not be regarded as having this as their normal duties. However, if they were to run a series of classes in the same school or one-off classes for a number of different schools, then this would be part of their normal duties.
88. Host parent. Host parenting is defined as an activity for the purposes of regulated work with children. Any individual who has agreed in advance to undertake this activity would be regarded as having this as their normal duties, whether the activity lasts for one night or three weeks or occurs once only or on a regular basis. However, an individual who provides host parenting at the last minute, e.g. because one of the other host parents has to cancel because of illness, would not be regarded as having this as their normal duties. (See also paragraphs 43 to 50 on being a host parent.)
89. Volunteer care and welfare work. An individual who volunteers with WRVS would be regarded as providing welfare services as part of their normal duties, irrespective of how infrequently they undertake the activity.

90. Note that *pre-arranged* stand-ins or substitutes may also come within the scope of the PVG Scheme, if this has been formalised with them in advance.

### **Case study C2.22**

#### **Ad hoc parent helper at school**

A. Mid-morning, Jenny receives a call from her daughter's head teacher asking if she can help on a school trip that afternoon as one of the volunteers has phoned in unwell. Jenny agrees.

B. Assessment:

1. Jenny is doing work.
  2. She is working with children.
  3. She is likely to be caring for, in sole charge of and having unsupervised contact with children under arrangements made by a responsible person.
  4. It is not, however, her normal duties as there was no way that the situation could reasonably have been foreseen. (But if the school had maintained a list of volunteers who could be called at short notice to help out and Jenny had featured on that list, then it would be her normal duties.)
- It is not necessary to consider step 5.

C. Answer: Jenny is not doing regulated work with children.

## **2.7- Step 5: Exceptions to regulated work**

91. The following exceptions only apply in the specific circumstances set out in the previous sections. They must be read in that context.

### **[1] - Incidental activity**

92. 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.
93. 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.
94. 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.
95. 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.
96. The "incidental" qualification does not feature in the definition of child care position under POCSA. This means that some positions which have been eligible for enhanced disclosure are outside the scope of the PVG Scheme.
97. If an activity is believed to be incidental, but actually attracts an overwhelming majority of children or protected adults, then the issue of whether the activity is or is not incidental should be reviewed before the next year / term / season. However, it is not practical or appropriate to change the classification of an activity "in flight".

**[2] - Work with children themselves in work**

98. Some activities are excluded<sup>32</sup> from regulated work with children if they are carried out in relation to children aged 16 or 17 in the course of the children's work. This means, for example, that a shop manager recruiting or supervising children aged 16 or 17 as assistants (whether as employees or volunteers) is not within the scope of regulated work with children.

**[3] - Work with children themselves in employment**

99. Some activities are excluded<sup>33</sup> from regulated work with children if they are carried out in relation to children under the age of 16 in the course of the children's employment. "Employment" is defined in section 97. Employment means paid employment whether under a contract of service or apprenticeship or under a contract for services. Work is much wider than employment in the PVG Act. This means, for example, that a shopkeeper employing a 14 year-

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<sup>32</sup> Paragraph 2(a) of schedule 2 to the PVG Act.

<sup>33</sup> Paragraph 2(b) of schedule 2 to the PVG Act.

old to do a paper round is outside the scope of regulated work but a scout leader supervising a group of 14-year-old scouts calling door-to-door to do odd jobs for money is within the scope of regulated work.

#### Younger children on work experience

100. Individuals working with children aged 16 or 17 on work experience are exempt by paragraph 2(a) of schedule 2 as the children are themselves working. In respect of younger children on work experience (and who are not themselves employed), neither paragraph 2(a) or (b) of schedule 2 offers any exemption. But it is to be expected that most employees in the host organisation working with such children would not be doing regulated work because their interaction with the children would either: not be one of the activities; not be their normal duties; or be incidental. For example, any care offered to children on a work placement would have to be above and beyond what is normally provided to employees for this to be any more than incidental. In practice, only any individual(s) allocated special responsibilities for the children for the entire duration of their placement is (are) likely to be doing regulated work.

#### **[4] – Opportunity for contact**

101. Some activities<sup>34</sup> are only regulated work with children if doing anything permitted or required in connection with the position gives the holder of the position the opportunity to have contact with children. A cleaner, for example, in the head office of an organisation providing care home services would not be regarded as doing regulated work with children.

102. Contact usually means physical proximity. (However, in some limited circumstances it might also include remote communications such as telephone or e-mail.) Contact does not necessarily require being in the same room but does require a line of sight with the possibility of physical access or communication. For example, a window cleaner cleaning the windows on the outside of a care home would be regarded as being in contact with residents on the other side of those windows.

103. Opportunity for contact with children means that there is a reasonable expectation, but not necessarily certainty, of contact with children. For example, an individual who is walking down a school corridor during the school day has the opportunity for contact with children. Whether or not the opportunity materialises, i.e. whether the individual actually meets any children, will vary from instance to instance and is not relevant to the assessment.

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<sup>34</sup> Namely those at paragraphs 9 and 10 of schedule 2.

**[5] - Incidental activity (caring for adults)**

104. Remember that 16 and 17-year-olds can be both children and protected adults. This exception to caring for protected adults<sup>35</sup> relates to an activity involving caring for protected adults under the age of 18 which is merely incidental to caring for children generally. Incidental activity is explained at [1] above. This application of the incidental test is different to the others, which apply it to the population in general, because receipt of care services makes an individual a protected adult. This exception excludes from regulated work with adults work which primarily involves caring for children.

**[6] – Establishments: children**

105. Work in an establishment<sup>36</sup> is not regulated work with children unless doing anything permitted or required in connection with the position gives the person the opportunity to have unsupervised contact with children. Unsupervised contact with children is defined in the PVG Act, see section 2.4 above.

106. The establishments identified in Part 3 were included in schedule 2 because they are places where there is the potential opportunity for workers having close proximity to children which would allow an unsuitable person the possibility of either “grooming” a child over a period of time or a more immediate physical or sexual attack.

107. Most "front-line" workers in these establishments will anyway be doing regulated work by virtue of their activities, especially: caring for children; teaching, instructing, training or supervising children; and being in sole charge of children. These provisions would capture teachers, nurses and doctors in children's hospitals, wardens in children's detention institutions etc, irrespective of work in establishments.

108. The PVG Act intends to capture those workers in establishments who are working in circumstances where the potential for grooming or immediate harm to a child is greater than they would be to members of the public. If an individual's normal duties in an establishment do not provide the opportunity for unsupervised contact, then it is hard to see how they are in a more privileged position than any member of the public (for example parents in the playground waiting to pick up their children) and therefore hard to see how they pose a greater risk.

109. The effect of this exception is twofold. Firstly, any individual working in an establishment, or part of an establishment, where no children are present is outside the scope of regulated work. Secondly, any individual working in an

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<sup>35</sup> Paragraph 2 of schedule 3 to the PVG Act.

<sup>36</sup> Part 3 of schedule 2 to the PVG Act.

establishment where children are present but who is supervised is not *by this fact alone* within the scope of regulated work.

110. The phrase “doing anything permitted or required in connection with the position” precludes individuals who might have opportunity for unsupervised contact with children if they act outside their authority. For example, a builder who was permitted to work in a part of a school which was sealed off for refurbishment but who strays into a part of the school which is in active use is going beyond what is permitted or required of him. Such a person will have unsupervised access to children but poses no greater danger than any other unauthorised person. The appropriate protection here is the prevention of unauthorised access to facilities rather than access to PVG Scheme membership and disclosure records.
111. The exception takes out from the scope of regulated work, for example, a builder during renovation work in a school building over the summer holidays or outside school hours when there are no children present. It also excludes the postman who delivers to a school’s main reception every day but does not have unsupervised contact with children. Another exclusion might be the driver of the “gritting lorry” that comes round at 7 a.m. before any pupils have arrived.
112. However, positions such as a school caretaker or ward cleaner in a children's hospital can reasonably be anticipated to provide the opportunity for unsupervised contact with children and these are within the scope of regulated work.

#### Parent Council meetings and other activities on school premises

113. Parent Councils, Combined Parent Councils or other parental bodies meeting in a school (or other educational establishment) either when there are no children present (e.g. evenings) or in the presence of a responsible person (e.g. a teacher or headmaster) are excluded from regulated work. However, Parent Councils, Combined Parent Councils or other parental bodies meeting in an educational establishment at times when children are present and in the absence of a responsible person are likely to come within the scope of regulated work (depending on the precise arrangements). But it should be possible for schools to make arrangements to ensure that parents attending Parent Council meetings are not doing regulated work with children by, for example, arranging for them all to be picked up from reception and taken to the meeting room.
114. An evening class for adults taking place on school premises would normally be ruled out from the scope of regulated work by this exception by virtue of the lack of opportunity for unsupervised contact with children.

**[7] – Establishments: adults**

115. Work in an establishment<sup>37</sup> is not regulated work with adults unless:
- doing anything permitted or required in connection with the position gives the person the opportunity to have unsupervised contact with protected adults; and
  - the contact with protected adults, when the holder of the position is doing anything permitted or required in connection with the position, is more than incidental.
116. The PVG Act defines “unsupervised contact with protected adults” to mean contact with protected adults in the absence of an individual doing regulated work within the establishment where the contact takes place (“a supervisor”). For work in establishments which does not involve any of the other activities (e.g. caring) to be regulated work with adults it must involve unsupervised contact.
117. Contact is unlikely to be unsupervised if:
- a supervisor is in the same room; or
  - a supervisor has a line of sight on the protected adult(s) and / or the individual(s) whose work is being supervised.
118. Note that only one supervisor is required at any given instant, however many protected adults or other workers are in the vicinity (within reason). For example, a singer who regularly entertains the residents in the lounge of a care home where a PVG Scheme member (in respect of regulated work with adults) is present is not doing regulated work with adults, despite working in a care home.
119. Incidental contact is also excluded. For example, people such as tradesmen, window-cleaners and entertainers whose work is supervised or brings them into fleeting contact with residents are not doing regulated work.
120. Certain workers may still be doing regulated work, for example, administrative staff, gardeners or cleaning staff who can move freely around the building or grounds and have unsupervised contact with the residents as part of their normal duties. Of course, most front-line workers such as care staff, nurses and social workers will be undertaking regulated work as they will be carrying out relevant activities.

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<sup>37</sup> Part 3 of schedule 3 to the PVG Act.

### **Case study C2.23**

#### **Medical Secretary**

A. Marion is a medical secretary in the cardiology department. She directs patients arriving at reception to the waiting area and answers their queries. She types up case notes and medical records for the department. She also takes telephone calls from patients about appointments and test results.

B. Assessment:

1. Marion is doing work.
  2. She is working with children and protected adults.
  3. She is not carrying out any of the specified activities or working in a specified establishment which fall within regulated work.
- It is not necessary to consider steps 4 to 5.

C. Answer: Marion is not doing regulated work.

### **Case study C2.24**

#### **Yoga teacher**

A. Rebecca is a Yoga teacher. Rebecca takes referrals from a GP for patients of all ages as part of a health recovery plan, contracted by the NHS.

B. Assessment:

1. She is doing work.
2. She is working with children. She is also providing a service the receipt of which makes the patients protected adults.
3. She is teaching children and protected adults.
4. It is her normal duties.
5. No exceptions apply.

C. Answer: Rebecca is doing regulated work with children and regulated work with adults.

### **Case study C2.25**

#### **Women's refuge**

A. Denise works for a women's refuge, set up and run by a voluntary organisation. Denise takes care of the children and provides support and counselling to the adult residents. She has received training.

B. Assessment:

1. Denise is doing work.
2. She is working with children. For her work with adults, an assessment has to be made about whether or not Denise is providing one or more of the

services, the receipt of which make an adult a protected adult. In this case, Denise is providing a welfare service. For the duration of the meetings with Denise, the adults in the refuge are protected adults.

3. She is caring for children. She is providing assistance, advice or guidance to protected adults.
4. It is her normal duties.
5. No exceptions apply.

C. Answer: Denise is doing regulated work with children and regulated work with adults.

### **Case study C2.26**

#### **The repairman**

A Arfan is a repairman on a call-out contract to a group of care homes. Arfan carries out any emergency repair work that may from time to time arise. This often involves being in residents' rooms.

B. Assessment:

1. He is doing work.
2. He is working with protected adults.
3. He is not doing any specified activity but he is working in a specified establishment.
4. It is part of his normal duties (as it is specified in his call-out contract).
5. He does have the opportunity for unsupervised contact with protected adults as part of doing anything permitted or required in connection with his position (it is permitted that he works in residents' rooms). The contact is not incidental as being in a resident's room is an essential part of carrying out a repair, if that is where the fault occurs.

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

### **Case study C2.27**

#### **The Hairdresser**

A. Olive is a self-employed hairdresser. Olive visits care homes to style the residents' hair but she is not left alone with the residents.

B. Assessment:

1. Olive is doing work.
2. Olive is working with protected adults (because they are receiving a care home service).
3. Olive is not carrying on a specified activity as general hair cutting does not constitute "care" – an individual visiting a hairdresser in town is not being cared for. But she is working in a specified establishment.

4. It is part of her normal duties.
5. There is an exception which applies: Olive is always supervised by a member of staff, so nothing permitted or required in connection with the position gives her the opportunity for unsupervised contact with protected adults.

C. Answer: Olive is not doing regulated work with adults.

### **Case study C2.28**

#### **Further Education College - Evening Lecturer**

A. Sasha is contracted as a lecturer by the council to give evening classes at a Further Education College teaching woodwork lessons open to the general public.

B. Assessment:

1. Sasha is doing work.
2. She is working with children. As she is not providing a health, care or welfare service she is not working with protected adults.
3. She is potentially teaching children. She is also working in a specified establishment.
4. It is her normal duties.
5. If children attend these classes, their attendance is incidental as the class was aimed at the general public. Furthermore, as the classes are after hours, she should not have the opportunity for unsupervised contact with children attending the establishment.

C. Answer: Sasha is not doing regulated work.

### **Case study C2.29**

#### **University Lecturer**

A. Louisa is university lecturer. Louisa teaches undergraduates and postgraduates. The university classes are aimed at the population as a whole but include some children in first year undergraduate classes.

B. Assessment:

1. Louisa is doing work.
2. Louisa is working with children.
3. Louisa is teaching children (in some classes). A university is not a specified establishment.
4. It is her normal duties.
5. Despite the fact that some children attend university, teaching them is incidental to the teaching of adults.

C. Answer: Louisa is not doing regulated work with children.

### **Case study C2.30**

#### **Administrative parent helper at school**

A. Graeme is a parent helper at school. One day per month he works with the school secretary assisting with uniform orders. Graeme's role consists of taking payment from pupils and, once their uniforms are delivered to the school, he hands them out to the relevant pupils but does not fit them. He is based at the front reception office and is not allowed access to other parts of the school.

B. Assessment:

1. Graeme is doing work.
2. He is working with children.
3. Graeme is not carrying out any of the specified activities but he is working in a specified establishment.
4. It is his normal duties.
5. As he will always be working with the school secretary (a responsible person, acting on behalf the headmaster) and is prohibited from wandering round other parts of the school, then nothing permitted or required in connection with his position gives him the opportunity to have unsupervised contact with children.

C. Answer: Graeme is not doing regulated work with children.

### **Case study C2.31**

#### **The decorator**

A. Michael is a painter and decorator. He works in a wide range of establishments and premises, including homes, factories and offices. He has been contracted to work in a part of a care home that is sealed-off for refurbishment, but he has to walk through functioning parts of the home to get to the location of his work.

B. Assessment:

1. Michael is doing work.
2. The residents of the care home are protected adults because they are receiving in care homes service.
3. Michael is not carrying out specified activity but is working in a specified establishment.
4. It is his normal duties as he has been contracted to do that work.
5. He does have the opportunity for unsupervised contact with protected adults as part of doing anything permitted or required in connection with his position (it is permitted that he walks through the functioning parts of the home). But any contact with protected adults in that area is only incidental.

C. Answer: Michael is not doing regulated work with adults.

