

Regulated Work with Children

How to assess whether an individual is doing regulated work

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

1. **Is it work?** Will the individual be carrying out either paid or unpaid work?
2. **Who are they working with?** Will the individual be working with children aged under 18 years?
3. **What do they do?** Will the individual be carrying out a particular activity, working in an establishment, holding a particular position or supervising/managing those in regulated work?
4. **Is it their normal duties?** Is it the individual's normal duties to carry regulated work with children aged under 18 years?
5. **Are there any exceptions which apply?** If delivering activities to children is this incidental to the individual's normal duties?

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

Regulated work with children is work in –

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

Normal duties

The concept of normal duties is extremely important in limiting the scope of regulated work. For an activity or work in an establishment to be regulated work, the carrying out of the activity or the work in the establishment must be part of the individual's normal duties.

Normal duties can be considered as something the individual might be expected to do as part of their post on an ongoing basis, for example appearing in a job description. Normal duties exclude one-off occurrences and unforeseeable events.

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

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

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

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

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

Section 1 (Particular activities)

- Caring for children (except caring for children which is merely incidental to caring for individuals who are not children).
- Teaching, instructing, training or supervising children (except teaching, instructing, or training children which is merely incidental to teaching, instructing, or training individuals who are not children)
- Being in sole charge of children
- Unsupervised contact with children under arrangements made by a responsible person.
- Providing advice or guidance to a child or to particular children which relates to physical or emotional well-being, education or training (except providing advice or guidance to a child or to particular children which is merely incidental to providing advice or guidance to individuals who are not children)
- Moderating a public electronic interactive communication service which is intended for use wholly or mainly by children. 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.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.

Incidental test

The scope of regulated work is narrowed by the incidental test. Some, but not all, activities with children or protected adults are excluded from being regulated work if the activity is occurring incidentally to working with individuals who are not children or protected adults. For example, a teacher in a school is doing regulated work with children but a college lecturer running woodwork classes in the evening aimed at adults is outside the scope of regulated work, even if one or two children attend his class. This is because the presence of children (and the teaching of children) is incidental to the main activity and purpose of the class which is to teach adults.

An activity is likely to be incidental when:

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

An activity is unlikely to be incidental when:

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

An important consideration is the degree to which it could be reasonably foreseen that children or protected adults would attend. Whether an activity is incidental or not is not so much about the numbers of children or protected adults attending but the purpose and intended client group for the activity. For example, an outdoor navigation skills day event advertised in a mountaineering magazine for the population in general may or may not attract some participants who are children. Whether the turnout is 5% or 50% children, the instructing of children is still an incidental activity.

- Work on any part of day care premises at times when children are being looked after in that part.
“Day care premises” means premises at which day care of children, within the meaning of section 2 of the 2001 Act, is provided.

- A “host parent” is a person -
 - who provides overnight accommodation for, or otherwise looks after, a child (as if the child were part of that person’s family) in connection with an organised activity in which the child is participating, but
 - who is not responsible for looking after the child when the child is participating in that activity.
- Providing, or working for an organisation which provides a care home service which is provided exclusively or mainly for children (but only if doing anything permitted or required in connection with the position gives the holder of the position the opportunity to have contact with children).
“Care home service” has the same meaning as in the 2001 Act.
- Providing, or working for an organisation which provides, an independent health care service which is provided exclusively or mainly for children (but only if doing anything permitted or required in connection with the position gives the holder of the position the opportunity to have contact with children).
“Independent health care service” has the same meaning as in the 2001 Act.

Section 2 (Establishments)

- An institution which is exclusively or mainly for the detention of children.
“Detention” means detention by virtue of an order of a court or under an enactment.
- A hospital which is exclusively or mainly for the reception and treatment of children.
“Hospital” has the meaning given by section 108(1) (interpretation) of the National Health Service (Scotland) Act 1978 (c. 29).
- A school.
- A further education institution.
“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 (asp 6).
- A hostel used mainly by pupils attending a school or institution detailed above
- A home which is exclusively or mainly for children and is provided by a council under—
 - (a) section 59 (provision by councils of residential and other establishments) of the Social Work (Scotland) Act 1968 (c. 49), or
 - (b) section 25 (provision of care and support services by local authority) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

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

Case study C2.12 Further Education College – Janitor

- A. Jon is employed as a janitor at a Further Education College (establishment).
- 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 C2.14

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.

Section 3 (Particular positions)

- Foster carer.
- Charity trustee of a children's charity
 "Children's charity" means a charity whose—
 - main purpose is to provide benefits for children, and
 - principal means of delivery of those benefits is by its workers doing regulated work with children.
 An individual works for a charity if the individual works under any arrangements made by the charity.

Section 4 Supervising & Management

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

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.

Individuals at one remove from the front-line, those with day to day supervision or management responsibilities for individuals doing regulated work are in a powerful position to safeguard (or harm) vulnerable groups by guiding or directing those individuals in their work.

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

- the holder of the position is responsible for the management, supervision, appraisal, training and immediate welfare of the individual (but note that responsibility for the recruitment, discipline and dismissal may reside with a dedicated HR department in large organisations);

- the holder of the position meets regularly with the individual to discuss and review the individual's work;
- the holder of the position quality assures the individual's work (e.g. by being present on occasion or reviewing outputs); or
- a person more senior than the holder of the position would hold that person responsible for any failing in respect of the individual's work.

Collective responsibility

Collective responsibility for a policy, process or organisation does not necessarily equate to collective responsibility for day to day supervision or management of workers. Even where the day to day supervision or management of an individual is the collective responsibility of a group, it is not the intention of the PVG Act that all members of the group are themselves doing regulated work and therefore expected to become PVG Scheme members. In such circumstances, it is preferable that one member of the group takes primary responsibility for the day to day supervision or management of the individual, at least in respect of the aspects of their work that are regulated work. It is also important to consider the "day to day" element of the test.

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

Examples of regulated work with children

Case study

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

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.
- 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

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

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.