

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

1. This document fulfils the duty in the Safeguarding Vulnerable Groups Act 2006¹ and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007² that the Secretary of State must publish statutory guidance on supervision of activity with children, which when unsupervised is regulated activity. This guidance applies in England, Wales and Northern Ireland.
2. For too long child protection policy has been developed in haste and in response to individual tragedies, with the well-intentioned though misguided belief that every risk could be mitigated and every loophole closed. The pressure has been to prescribe and legislate more. This has led to public confusion, a fearful workforce and a dysfunctional culture of mistrust between children and adults. This Government is taking a different approach.
3. We start with a presumption of trust and confidence in those who work with children, and the good sense and judgement of their managers. The law is that supervision must be reasonable, which gives local managers the flexibility to determine what is reasonable for their circumstances. In law, an organisation will have no entitlement to do a barred list check on a worker who, because they are supervised, is not in regulated activity.
4. The precise nature and level of supervision will vary from case to case. The duty means that organisations must ensure that the supervision in place is sufficient, in their judgement, to provide reasonable assurance for the protection of the children concerned.
5. The duty that supervision must take place “on a regular basis” means that supervision must not, for example, be concentrated during the first few weeks of an activity and then tail off thereafter, becoming the exception not the rule. It must take place on an ongoing basis, whether the worker has just started or has been doing the activity for some time.
6. Within the statutory duty, the level of supervision may differ, depending on all the circumstances of a case. Organisations should consider the following factors in deciding the specific level of supervision the organisation will require in an individual case:
 - the age of the children concerned;
 - the number of children that the individual is working with;
 - whether or not there are other carers/ adults around;
 - the nature of the individual’s work or contact with the children;
 - the vulnerability of the children;
 - the experience of, and checks carried out on, the person being supervised;
 - the number of people being supervised.

¹ 2006 Act, amended by Protection of Freedoms Act 2012: Sch 4, para 5A: guidance must be “for the purpose of assisting” organisations “in deciding whether supervision is of such a kind that” the person being supervised is not in regulated activity.

² 2007 Order, Sch 2, para 5A is as above on guidance on “supervision” for Northern Ireland.

EXAMPLES

A supervised volunteer, in a specified place

Mr Jones, a new entrant volunteer, helps children with their reading at a local school for two mornings a week. Mr Jones is generally based in the classroom, in sight of the teacher. Sometimes Mr Jones takes some of the children to a separate room to listen to them reading, where he is supervised by a paid classroom assistant, who is in that room most of the time.

- A person in regulated activity (either the teacher or the classroom assistant) is supervising Mr Jones to the statutory standard;
- therefore Mr Jones is not in regulated activity and the law does not give the school a duty (or power) to do a barred list check on Mr Jones.
- The law does not place on the school a duty to require an enhanced criminal records check, but the school is entitled to do so.

The school chooses to do an enhanced criminal records check.

A supervised volunteer, not in a specified place

Mr Wood, a new entrant volunteer, assists with the coaching of children at his local cricket club. The children are divided into small groups, with assistant coaches such as Mr Wood assigned to each group. The head coach, Mr Smith, oversees the coaching, spends time with each of the groups, and has sight of all the groups (and the assistant coaches) for most of the time. A barred list check has been done on Mr Smith, as he is in regulated activity.

- A person in regulated activity (Mr Smith) is supervising Mr Wood to the statutory standard;
- therefore the club must not require a barred list check on Mr Wood.
- The law does not place on the club a duty to require an enhanced criminal records check, but the club is entitled to if it chooses to.

The club chooses not to do an enhanced criminal records check. They take special care in places where children may be particularly vulnerable, such as changing rooms.

Unsupervised volunteer, not in a specified place

Mrs Shah starts as an activity organiser at a youth club. She instructs a group of children, is not herself supervised, and supervises a number of paid assistant leaders. The youth club manager has known Mrs Shah well for many years.

- Mrs Shah is entering regulated activity, and therefore the club must obtain a barred list check on Mrs Shah;
- The law does not require the youth club to do an enhanced criminal records check, but the youth club is entitled to if it chooses to.

The club manager does the barred list check which he must do, and chooses not to do an enhanced criminal records check.

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