

2023 No. 1402

NATIONAL HEALTH SERVICE, ENGLAND

SOCIAL CARE, ENGLAND

PUBLIC HEALTH, ENGLAND

**The Health and Social Care Act 2008 (Regulated Activities)
(Amendment) Regulations 2023**

Made - - - at 9.30 a.m. on 18th December 2023

Laid before Parliament at 4.00 p.m. on 18th December 2023

Coming into force 6th April 2024

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 20(2) and (3) and 161(3) and (4) of the Health and Social Care Act 2008^(a).

In accordance with section 20(8) of that Act, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2023 and come into force on 6th April 2024.

(2) These Regulations extend to England and Wales.

Amendment of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

2.—(1) The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014^(b) are amended in accordance with paragraph (2).

(2) After regulation 9 (person-centred care) insert—

“Visiting and accompanying in care homes, hospitals and hospices

9A.—(1) This regulation applies to a registered person in respect of a relevant regulated activity carried on in a care home, hospital or hospice.

(2) Unless there are exceptional circumstances, service users—

(a) 2008 c. 14. The opening words of section 20(2) were substituted by section 1 of the Health and Social Care (Safety and Quality) Act 2015 (c. 28). Section 20(3) was amended by section 173 of the Health and Care Act 2022 (c. 31). Section 161(3) was amended by section 294(4) of the Health and Social Care Act 2012 (c. 7). See section 97(1) of the Health and Social Care Act 2008 for the definitions of “prescribed” and “regulations”.

(b) S.I. 2014/2936, to which there are amendments not relevant to these Regulations.

- (a) whose care or treatment involves an overnight stay or the provision of accommodation in a care home, hospital or hospice, must be facilitated to receive visits at those premises;
- (b) who are provided with accommodation in a care home, must not be discouraged from taking visits out of that care home;
- (c) who attend a hospital or hospice for the provision of care or treatment which does not involve an overnight stay, must be enabled to be accompanied at those premises by a family member, friend or a person who is otherwise providing support to the service user.

(3) Without limiting paragraph (2), the things which a registered person must do to comply with that paragraph include—

- (a) in relation to paragraph (2)(a), securing that service users are facilitated to receive visits in a way that is appropriate, meets the service user's needs and, so far as reasonably practicable, reflects their preferences;
- (b) in relation to paragraph (2)(a) and (c), taking such action, or putting in place such precautions, as is necessary and proportionate to ensure that service users may receive visits or be accompanied safely;
- (c) securing that, when making arrangements or decisions in respect of a service user for the purposes of paragraph (2), regard is given to any care or treatment plan for the service user;
- (d) involving relevant persons when making any arrangements or decisions in respect of a service user for the purposes of paragraph (2).

(4) Nothing in this regulation—

- (a) requires a service user to receive a visit, take a visit out of a care home or be accompanied—
 - (i) without the relevant person's consent, or
 - (ii) where the service user lacks the capacity to give consent, where it would not be in the service user's best interests;
- (b) requires or enables a registered person to do anything which would not be in accordance with any court or tribunal order or with any provision (including any direction, power or authorisation) contained in, or made by virtue of, any of the legislation listed in paragraph (5) (including by virtue of any instrument made under that legislation).

(5) The legislation referred to in paragraph (4)(b) is—

- (a) the 1983 Act;
- (b) the 2005 Act;
- (c) so far as relating to high security psychiatric services, the 2006 Act.

(6) (a) In this regulation—

“care home” has the meaning given in section 3 (care homes in England) of the Care Standards Act 2000(a);

“hospice” means an establishment other than a hospital whose primary function is the provision of palliative care to persons who attend or are resident there who are suffering from a progressive disease in its final stages;

“relevant regulated activity” means an activity prescribed in regulation 3 as a regulated activity for the purposes of section 8(1) of the Act, except it does not include—

- (i) the regulated activities in paragraphs 1, 3, 8 and 9 of Schedule 1,

(a) 2000, c. 14. Section 3 was amended by paragraph 4 of Schedule 5 to the Health and Social Care Act 2008 (c. 14). There are other amendments to section 3 which are not relevant to these Regulations.

- (ii) any detoxification services for substance misuse provided in the course of carrying on a regulated activity,
- (iii) any services provided to a service user (other than a service user who is in receipt of services provided in the carrying on of the regulated activity in paragraph 5 of Schedule 1) who—
 - (aa) is, or is required to be, detained in a prison or other institution to which the Prison Act 1952(a) applies,
 - (bb) is detained under the Immigration Acts(b),
 - (cc) is required to be detained in a prison or other institution to which equivalent legislation to that referred to in sub-paragraph (aa) applies in Scotland and Northern Ireland;

“visit” (except in the context of the taking of a visit out of a care home), means a visit from—

- (i) a family member of the service user,
- (ii) a friend of the service user,
- (iii) a person visiting to provide support or companionship to the service user;
- (b) in the definition of ‘relevant regulated activity’ in sub-paragraph (a), “prison” has the same meaning as in section 53(1) of the Prison Act 1952(c);
- (c) a reference to having or lacking capacity, or to a person’s best interests, in this regulation is to be interpreted in accordance with the 2005 Act.”.

Signed by authority of the Secretary of State for Health and Social Care

Helen Whately
Minister of State

At 9.30 a.m. on 18th December 2023

Department of Health and Social Care

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (“the 2014 Regulations”).

Regulation 2 amends the 2014 Regulations. Regulation 2(2) inserts a new fundamental standard, regulation 9A (visiting and accompanying in care homes, hospitals and hospices), into the 2014 Regulations.

New regulation 9A provides as follows—

- Regulation 9A(1) provides that regulation 9A applies to a registered person in respect of ‘relevant regulated activities’ (as defined in regulation 9A(6)) carried on in care homes, hospitals and hospices.
- Regulation 9A(2) applies unless there are exceptional circumstances. It provides that service users must be facilitated to receive visits in a care home, hospital or hospice where their care or treatment involves an overnight stay or the provision of accommodation in those premises and that service users who are provided with accommodation in a care home must not be discouraged from taking visits out of the care home. It further provides that where a service user attends a hospital or hospice for the

(a) 1952, c. 52.

(b) For the definition of ‘the Immigration Acts’ see Schedule 1 to the Interpretation Act 1978 (c. 30).

(c) Section 53(1) was amended by Schedule 6 to the Children and Young Persons Act 1969 (c. 54). There are other amendments to section 53(1) which are not relevant to these Regulations.

provision of care or treatment which does not involve an overnight stay, they must be enabled to be accompanied at the hospital or hospice.

- Regulation 9A(3) sets out the things that a registered person must do to comply with regulation 9A(2), which includes, for example, putting in place necessary and proportionate precautions to enable a service user to receive visits or be accompanied safely.
- Regulation 9A(4) provides that nothing in regulation 9A requires a service user to receive a visit, take a visit out of a care home or to be accompanied without their consent or where the service user does not have capacity, where it would not be in their best interests. In addition, it provides that nothing in regulation 9A requires or enables a registered person to do anything which would not be in accordance with any court or tribunal order or with any provision made in or under relevant legislation. Regulation 9A(5) sets out the relevant legislation.
- Regulation 9A(6) sets out the definitions for terms used in regulation 9A.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. A de minimis assessment is available from the Department of Health and Social Care, 39 Victoria Street, London, SW1H 0EU and is published with the Explanatory Memorandum alongside this instrument at www.legislation.gov.uk.

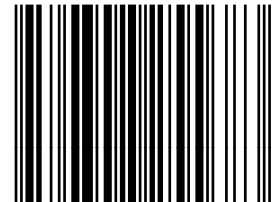
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£5.78

<http://www.legislation.gov.uk/id/uksi/2023/1402>

ISBN 978-0-34-825568-3



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