

Protection of Freedoms Act 2012

May 2012 Information Sheet¹

The changed definition of ‘Vulnerable Adult’ in the context of adult protection

Summary

- This sheet has been produced in response to requests for information about the statutory definition of ‘Vulnerable Adult’ following the amended definition in the Protection of Freedoms Act 2012². Further information will be provided once the regulations and guidance are published.
- The definition of Vulnerable Adult has changed. An adult is defined as vulnerable when they are in receipt of a ‘regulated activity’ in relation to vulnerable adults.
- It is important to recognise that any adult can be subject to abuse and that they do not have to be vulnerable as newly defined. Any adult could be subjected to domestic abuse, financial abuse, physical and emotional abuse etc

1. Definition of ‘vulnerable adult’

This is to change, once the relevant provisions of the Protection of Freedoms Act have been brought into force.

Hitherto, a vulnerable adult has been defined as a person who is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation in any care setting. This includes individuals in receipt of social care services, those in receipt of other services such as health care, and those who may not be in receipt of services.

This definition contains two concepts – a person who is in receipt of or in need of certain services, *and* a person who suffers from certain characteristic which prevents him / her from taking sufficient care or providing him / herself with sufficient protection. This second leg (characteristic) is now going. It has been experienced as stigmatising by many individuals who fall within the definition. Some argue that it has also led to an increased demand on resources. For whatever the combination of reasons, the second leg is going as is the mention of services a person may need as well as what s/he is receiving.

¹ The situation for the Methodist Church in Scotland is different. This information sheet will be of general interest but the statutory information does not apply.

² Please note that although the Protection of Freedoms Act 2012 received Royal Assent on 1 May 2012, many of its provisions have yet to be brought into force. The vast majority of provisions which relate to safeguarding, vetting and barring and the criminal records regime are not in force yet, (that includes the new definition of “vulnerable adult”). The changes introduced by the Act will be addressed separately once draft regulations and guidance are available, to provide some of the detail which is missing from the primary legislation.

This leaves the definition as a rather circular description, as follows: an adult is defined as vulnerable when they are in receipt of a 'regulated activity' in relation to vulnerable adults.

Regulated activity

This is defined as:

- the provision of health care treatment in any setting by a health care professional, or by a person acting under the direction or supervision of a health care professional such as a health care assistant in a hospital or care home . This includes first aid provided by organisations such as St John's Ambulance, as is the case for children;
- the provision of relevant personal care in any setting to a person who needs the care because of age, illness or disability. Relevant personal care is defined at new sub-paragraph (3B) of Schedule 4 to the SVGA and includes physical care such as assistance with eating, drinking, toileting, washing and dressing; prompting, together with supervision, for those activities, where such prompting and supervision are necessary for their execution; and any training, instruction, advice or guidance necessary for those activities (for example, a person given training on how to manage successfully their own chronic illness or disability);
- the provision of relevant social work by a social worker to clients or potential clients.
- the provision of assistance, in relation to general household matters, to a person who requires it because of age, illness or disability. This is defined as day to day assistance with paying bills, shopping or managing the person's cash;
- the provision of assistance to a person where there is a formal arrangement in place which allows a person to make welfare and/or financial decisions on behalf of another person ;
- the transportation of individuals where that transport is provided because of age, health or disability. The Government has stated that regulations will set out the specific circumstances when this subsection applies, but broadly it is intended to cover ambulance services, transport to and from day care services where the transport is arranged by (or on behalf of) the day care provider, hospital porters and patient transport.

Changes to the previous definition of 'regulated activity' for vulnerable adults

For those who have worked to the previous definition, the following changes should be noted:

- an activity in a care home is no longer automatically regulated – it has to fit one of the categories listed above.
- there is no longer a condition of regularity (e.g. frequent / weekly as for children). This means that a person providing health or personal care for example, need only do so once to come within the definition.
- the concept of 'vulnerable adults charity' has been removed, meaning that a Parish Church Council or Methodist Church Council can no longer be described in this way. This has implications for CRB eligibility as well as for people who are ISA barred being able to become members of such meetings.

2. The safeguarding of vulnerable adults

All adults can be at risk of abuse. Adults who are vulnerable face particular and increased risk. The Government's policy³ is as follows:

The Government's policy objective is to prevent and reduce the risk of significant harm to vulnerable adults from abuse or other types of exploitation, whilst supporting individuals in maintaining control over their lives and in making informed choices without coercion.

The Government believes that safeguarding is everybody's business with communities playing a part in preventing, detecting and reporting neglect and abuse. Measures need to be in place locally to protect those least able to protect themselves. Safeguards against poor practice, harm and abuse need to be an integral part of care and support. We should achieve this through partnerships between local organisations, communities and individuals.

The same document sets out the following outcomes and principles, which it encourages all organisations to use as a benchmark for our service towards adults who are vulnerable. The **outcomes** are set out from the perspective of the individual:

People worked together to reduce risk to my safety and well being

and

People worked together and helped when I was harmed

The **principles** are:

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| Empowerment | - Presumption of person led decisions and informed consent. |
| Protection | - Support and representation for those in greatest need. |
| Prevention | - It is better to take action before harm occurs. |
| Proportionality | – Proportionate and least intrusive response appropriate to the risk presented. |
| Partnership | - Local solutions through services working with their communities. Communities have a part to play in preventing, detecting and reporting neglect and abuse. |
| Accountability | - Accountability and transparency in delivering safeguarding. |

³ 16 May 2011 Department of Health Statement of Government Policy on Adult Safeguarding

Adult and child protection

Within the Church context, it is important to recognise that abuse can also be perpetrated against adults who are not vulnerable according to the statutory definition. Where substantiated, such abuse would be recorded as a criminal matter (e.g. sexual assault) and / or misconduct within the church disciplinary structure. Appendix 1 provides some data about the abuse of vulnerable adults. There are no equivalent statistics about the abuse of adults who are not vulnerable but the outcomes and general principles set out by the government (above) are applicable.

Some situations of abuse or of risk of harm, in relation to vulnerable adults or others, can also impact on children. An obvious example would be the significant amount of crossover between domestic violence against an adult, and other forms of child abuse within the same household.

Summary

Within the Church of England and the Methodist Church, we need to continue to explore how this all looks in practice at the level of local church, as well as within all of our church procedures. This information sheet aims to promote this exploration through raising awareness of recent developments. More information will be shared as it becomes available.

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Appendix 1

Prevalence – abuse of vulnerable adults

NHS statistics⁴ showed the following for the year 2010/11:

Of the 96,000 reported cases in England referred to councils' Adult Safeguarding teams, 94,500 had key information recorded. Of those 94,500; 35% related to alleged abuse taking place in a care home while 42% related to alleged abuse in the vulnerable adult's own home.

- Just under half of the referrals reported (49 %) were about adults with a physical disability.
- 23 % were about adults with a mental health issue.
- 21 % were about adults with a learning disability.
- 7 % of referrals were about substance misusers or other vulnerable adults.

Councils recorded 13,900 repeat referrals; where two or more separate referrals about the same vulnerable adult were received within the year. Social care staff were the main source of referrals (44%).

Alleged types of abuse – some incidents had multiple types

- 36% involved physical abuse.
- 28% involved neglect.
- 24% involved financial abuse.
- 19% involved emotional or psychological abuse.
- 12% involved sexual, discriminatory or institutional abuse.

Alleged perpetrators (some referrals may have involved more than one person)

- 29 % involved a social care or health care worker as the alleged perpetrator.
- 25 % involved a family member (including the vulnerable adult's partner).
- 13 % involved another vulnerable adult.
- 12 % involved a neighbour, friend, stranger, volunteer or other professional.

⁴ NHS Information Centre 3.11.11. <http://www.ic.nhs.uk/statistics-and-data-collections/social-care/adult-social-care-information/abuse-of-vulnerable-adults-in-england-2010-11-provisional-experimental-statistics>

Appendix 2 Changes to the definition of Vulnerable Adults within the Protection of Freedoms Act 2012

Stephen York, the Legal Office of the National Institutions of the Church of England

At the present time, section 59(1) of the Safeguarding Vulnerable Groups Act 2006 (the "SVGA") defines "vulnerable adults" by reference to certain settings or by receipt of certain services and certain specific status.

"Regulated activity" relating to vulnerable adults is currently defined in section 59 of, and Parts 2 and 3 of Schedule 4 to, the SVGA. The definition is wide and covers, for example, "any form of care for or supervision for vulnerable adults" (paragraph 7(1)(b) of Schedule 4) or "any form of assistance, advice or guidance...wholly or mainly for vulnerable adults" (paragraph 7(1)(c) of Schedule 4). The intention in the SVGA is that the reason for the care, supervision, assistance, advice or guidance being provided is because of the adult's vulnerability. "Regulated activity" is also qualified by 'a frequency condition' (paragraph 7(1) of Schedule 4).

As a result of sections 65 and 66 of the Protection of Freedoms Act 2012 (the "2012 Act"), the definition in the SVGA will no longer define an adult as permanently vulnerable and will instead emphasise that an adult is vulnerable at the time they are being provided with a specified activity that they require, (i.e. a regulated activity, such as health or social care) and will instead focus on the person providing the regulated activity. This means that the SVGA will no longer attempt to define vulnerability or label a person as permanently vulnerable.

Section 59 is deleted by the 2012 Act and now s. 60 of the SVGA states:- " "adult" means a person who has attained the age of 18" and " "vulnerable adult" means any adult to whom an activity which is a regulated activity relating to vulnerable adults by virtue of any paragraph of paragraph 7(1) of Schedule 4 is provided"

In summary:-

Section 65 of the 2012 Act defines vulnerable adult as any person aged 18 or over for whom a "regulated activity" is provided. Section 66 makes amendments to the definition of "regulated activity" relating to vulnerable adults so as to define a vulnerable adult by the activities being carried out regardless of the setting or service.

Section 66 amends the definition of "regulated activity" relating to vulnerable adults (paragraphs 7(1) to (3) of Schedule 4 to the SVGA).

Section 66(2) amends the existing paragraphs 7(1) to (3) of Schedule 4 of the SVGA by inserting new paragraphs 7(1) to (3E). These new paragraphs redefine a "regulated activity" in relation to vulnerable adults to include:-

- *the provision of health care treatment in any setting by a health care professional, or by a person acting under the direction or supervision of a health care professional such as a health care assistant in a hospital or care home . This includes first aid provided by organisations such as St John's Ambulance, as is the case for children;*

- *the provision of relevant personal care in any setting to a person who needs the care because of age, illness or disability. Relevant personal care is defined at new sub-paragraph (3B) of Schedule 4 to the SVGA and includes physical care such as assistance with eating, drinking, toileting, washing and dressing; prompting, together with supervision, for those activities, where such prompting and supervision are necessary for their execution; and any training, instruction, advice or guidance necessary for those activities (for example, a person given training on how to manage successfully their own chronic illness or disability);*
- *the provision of relevant social work by a social worker to clients or potential clients;*
- *the provision of assistance, in relation to general household matters, to a person who requires it because of age, illness or disability. This is defined as day to day assistance with paying bills, shopping or managing the person's cash;*
- *the provision of assistance to a person where there is a formal arrangement in place which allows a person to make welfare and/or financial decisions on behalf of another person ;*
- *the transportation of individuals where that transport is provided because of age, health or disability. The Government has stated that regulations will set out the specific circumstances when this subsection applies, but broadly it is intended to cover ambulance services, transport to and from day care services where the transport is arranged by (or on behalf of) the day care provider, hospital porters and patient transport.*

Section 66(3) removes from the definition of “regulated activity” an activity in a care home provided for vulnerable adults. Workers who provide health or personal care or any other “regulated activity” to care home residents will fall within the revised definition in new paragraph 7(1) of Schedule 4 to the SVGA. Save for a consequential amendment, paragraph 7(5) of Schedule 4 is retained, so line managers with regular day to day management or supervision of a person carrying out a “regulated activity” as mentioned in new paragraph 7(1) (for example, care home managers) are still within “regulated activity”.

Section 66(6) removes from the definition of “regulated activity” certain inspection functions of the Care Quality Commission.

Section 66(7) and 66(8) remove from the definition of a “regulated activity” a member of a relevant local government body, local authority chief executives, charity trustees and the proprietors or managers of regulated establishments or agencies. PCC's will no longer be able to fall within the definition of “vulnerable adult's charity” if they carry out work targeted at “vulnerable adults”, as the concept is removed from the SVGA by clause 66(8). A person who is on the ISA barred list will not now commit an offence if he/she acts as a trustee of a PCC who targets its work at vulnerable adults, unless the nature of his/her particular function qualifies as “regulated activity”.

Section 66(9) removes the period condition in respect of regulated activity for vulnerable adults. This means that a person providing health or personal care for example, need only do so once to come within “regulated activity”.