

A new system of registration

**Supported living schemes:
Regulated activities for which the provider
may need to register**

Guidance for providers

Introduction

This guidance clarifies the main differences between the regulated activities of ‘accommodation for persons who require nursing or personal care’ and ‘personal care’, particularly in the context of supported living services.

It also provides guidance on what indicators to look for when it is not clear which of the two regulated activities is being provided.

You should this guidance alongside our *Scope of registration* publication, available on our website.

Key points

1. Under the Health and Social Care Act 2008, providers of health and adult social care services must, by law, register with CQC if they carry on a regulated activity. If they carry on a regulated activity without being registered, they may be prosecuted and liable to a fine.
2. It is a provider’s responsibility to make sure that they are appropriately registered to carry on the services they provide.
3. Where providers are appropriately registered, people who use those services can expect the service to meet essential standards of quality and safety that respect their dignity and protect their rights.
4. It is important that a provider is correctly registered for the regulated activity they are actually carrying on. In order for a provider of a supported living service to be correctly registered to carry on ‘personal care’, rather than ‘accommodation for persons who require nursing or personal care’, there must be a clear separation between the provision of care and the provision of accommodation.
5. We are aware that different types of social care service attract different levels of funding. However, it is the regulated activity actually being carried on that determines what registration is required.

Guidance

1. Who needs to register?	<ul style="list-style-type: none">• Any person who carries on a ‘regulated activity’ needs to register.• This guidance focuses on two regulated activities:<ul style="list-style-type: none">○ Accommodation for persons who require nursing or personal care○ Personal care.
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<p>2. How does CQC register providers under the Health and Social Care Act 2008?</p>	<ul style="list-style-type: none"> • Providers need to register for the regulated activities that they carry on. The definitions of the regulated activities are set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, available at www.legislation.gov.uk/ukdsi/2010/9780111491942. You can find more detail on them in our <i>Scope of registration</i> publication, available from our website www.cqc.org.uk. • It is important that you are registered for the correct regulated activity in relation to the particular service being provided. • When you submit an application to be registered to carry on a regulated activity, they will tell us: <ul style="list-style-type: none"> ○ The location from where the activities are carried on ○ The service type. • <u>The location</u> is part of your formal registration and will be shown as a condition on your registration. • You must be registered to carry on the regulated activity for the location. If you are not registered, it will be a breach of a condition and we will take appropriate enforcement action. • You can read more about locations in our guidance document <i>What is a location?</i> available on our website. • <u>The service type</u> is not part of your formal registration. • You should pick the service type that is most like the service you are offering. Knowing what type of service is being run will support you in making decisions about how you monitor compliance with the essential standards of quality and safety, and what our expectations would be for that service. • The service types are set out in our <i>Guidance about compliance: Essential standards of quality and safety</i>, available at www.cqcguidanceaboutcompliance.org.uk.
<p>3. What activity would require a provider to be registered for '<u>accommodation for persons who require nursing or personal care</u>'?</p>	<ul style="list-style-type: none"> • If you are providing residential accommodation <u>together with</u> nursing or personal care, you need to be registered for this regulated activity. • The definition of personal care for the purpose of registration is in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010: <p>“A. Physical assistance given to a person in connection with:</p> <ul style="list-style-type: none"> ○ eating or drinking (including the administration of

	<ul style="list-style-type: none"> parenteral nutrition) ○ toileting (including in relation to the process of menstruation) ○ washing or bathing ○ dressing ○ oral care, or ○ the care of skin, hair and nails (with the exception of nail care provided by a chiropodist or podiatrist); or <p>B. The prompting, together with supervision, of a person, in relation to the performance of any of the activities listed in paragraph A, where that person is unable to make a decision for themselves in relation to performing such an activity without such prompting and supervision.”</p> <ul style="list-style-type: none"> ● Please note: the definition of personal care is wider than under the Care Standards Act 2000, as it now includes prompting. ● Nursing care is also defined in the legislation. It means: <ul style="list-style-type: none"> “any services provided by a nurse and involving— (a) the provision of care; or (b) the planning, supervision or delegation of the provision of care, other than any services which, having regard to their nature and the circumstances in which they are provided, do not need to be provided by a nurse.” ● This regulated activity does not apply to the provision of: <ul style="list-style-type: none"> ○ Accommodation to an individual by an adult placement carer under the terms of a carer agreement, or ○ A school, or ○ An institution within the further education sector.
<p>4. What activity would require a provider to be registered for <u>‘personal care’</u>?</p>	<ul style="list-style-type: none"> ● The full definition of personal care is given in question 3 above ● The regulated activity of personal care consists of the provision of personal care for people who are unable to provide it for themselves, because of old age, illness or disability, in the place where they are living. This might capture, for example, a domiciliary care agency. ● The regulated activity of personal care is different from:

	<ul style="list-style-type: none"> ○ Accommodation for persons who require nursing ○ Personal care, or accommodation and nursing or personal care in the further education sector. ● If a provider is registered for either of those activities, they do not also need to register for the activity of personal care in respect of the same service. ● If a provider wanted to carry on providing personal care by way of a separate service, for example a domiciliary care agency in addition to a care home, then registration to provide both activities would be required. ● The following services do not need to register with us: <ul style="list-style-type: none"> ○ Employment agencies or businesses ○ Introduction of carers, with no ongoing role ○ A personal arrangement between an individual and a carer to meet their own care requirements, including personal budgets ○ Personal care provided by a person managing a prison or similar custodial establishment. ● More detail on these exceptions can be found in schedule 1, paragraph 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010.
<p>5. What is a supported living service?</p>	<ul style="list-style-type: none"> ● The definition we use is: Where people live in their own home and receive care and/or support in order to promote their independence. If there is genuine separation between the care and the accommodation, the care they receive is regulated by CQC, but the accommodation is not. The support that people receive is often continuous and tailored to their individual needs. It aims to enable the person to be as autonomous and independent as possible, and usually involves social support rather than medical care.
<p>6. Do all supported living services need to be registered by CQC?</p>	<ul style="list-style-type: none"> ● No, you only need to be registered when you are carrying on a regulated activity. ● If the support being offered is not within the definition of nursing or personal care, for example support with cleaning, cooking and shopping, or supervising the person to take medicine that has been prescribed by their doctor, then you are not required to register. ● If a person is receiving personal care but it is not being provided in the place where they are living (for example day services), then you are not required to register. ● It is for you to make the decision about which regulated

	<p>activity you wish to apply for.</p> <ul style="list-style-type: none"> We will then assess that application and make a decision about whether to accept it. There is an appeals process in place if you do not agree with our decision. 																		
<p>7. Does CQC expect providers of certain service types to register for certain regulated activities?</p>	<ul style="list-style-type: none"> Yes, we have produced guidance that explains which regulated activities for which different types of services are most likely to need to register The following is a summary: <table border="1" data-bbox="566 593 1428 1176"> <thead> <tr> <th data-bbox="566 593 853 795"></th> <th data-bbox="853 593 1125 795">Providing just personal care</th> <th data-bbox="1125 593 1428 795">Providing accommodation together with nursing or personal care</th> </tr> </thead> <tbody> <tr> <td data-bbox="566 795 853 884">Care home without nursing</td> <td data-bbox="853 795 1125 884">Highly unlikely</td> <td data-bbox="1125 795 1428 884">Highly likely</td> </tr> <tr> <td data-bbox="566 884 853 974">Care home with nursing</td> <td data-bbox="853 884 1125 974">Highly unlikely</td> <td data-bbox="1125 884 1428 974">Highly likely</td> </tr> <tr> <td data-bbox="566 974 853 1030">Domiciliary care</td> <td data-bbox="853 974 1125 1030">Highly likely</td> <td data-bbox="1125 974 1428 1030">Highly unlikely</td> </tr> <tr> <td data-bbox="566 1030 853 1120">Extra Care housing</td> <td data-bbox="853 1030 1125 1120">Highly likely</td> <td data-bbox="1125 1030 1428 1120">Highly unlikely</td> </tr> <tr> <td data-bbox="566 1120 853 1176">Supported living</td> <td data-bbox="853 1120 1125 1176">Highly likely</td> <td data-bbox="1125 1120 1428 1176">Highly unlikely</td> </tr> </tbody> </table> It is important to note, however, that a provider of a supported living service can only register for the regulated activity of ‘personal care’ rather than ‘accommodation for persons who require nursing or personal care’ if there is <u>clear and sufficient separation</u> between the provision of the accommodation and the provision of the care. The occupier must have genuine choice concerning the provisions of care provision. See questions 8, 9 and 10 below. 		Providing just personal care	Providing accommodation together with nursing or personal care	Care home without nursing	Highly unlikely	Highly likely	Care home with nursing	Highly unlikely	Highly likely	Domiciliary care	Highly likely	Highly unlikely	Extra Care housing	Highly likely	Highly unlikely	Supported living	Highly likely	Highly unlikely
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8. What factors may be indicative of accommodation being provided 'together with' care?

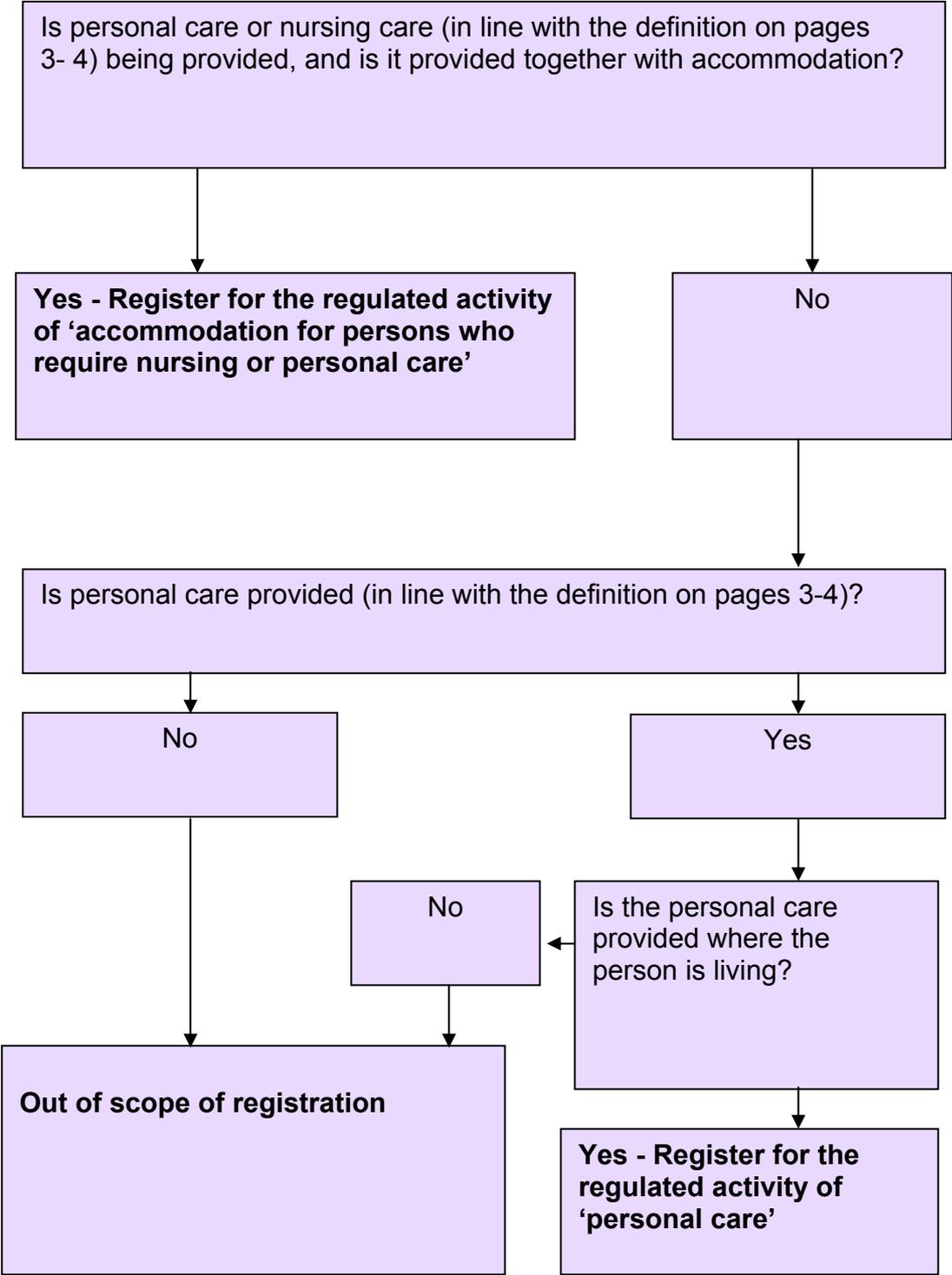
- There are a number of possible indicators to be taken into consideration in making a judgement about whether the accommodation and care are provided together. The indicators below are not conclusive in their own right and it is important to consider the whole picture. They will not all be applicable in every case.
 - The provider of the care and the accommodation is the same legal entity, with no clear separation between the provision of the two elements.
 - (Note, however, that although the accommodation and care have to be provided together to satisfy the regulated activity definition, this does not have to be by the same company or individual. There may be different legal entities involved, for example different companies within the same group, or organisations that are otherwise unrelated but work together in some way to provide the service given. The facts surrounding how the entities function in practice to provide the service are what is important and this will need to be examined in each case.)
 - Any tendering process undertaken did not permit different unconnected organisations to tender for the care and for the accommodation.
 - The two functions of care and accommodation are provided literally 'together', that is, wholly joined and relying on each other. They could be different legal entities, or different arms of a social landlord, but there is significant connection or coordination between the two.
 - There is mutual reliance or coordination between the two functions.
 - Receiving accommodation is dependent on receiving care from the accommodation provider or an associated company body, and vice versa.
 - Accommodation is dependent on the receipt of care from a given care provider, with no element of choice on the part of the person using the service.
 - People using the service do not hold genuine and valid tenancy agreements.

<p>9. If people have a tenancy agreement, does this mean the service is not providing care and accommodation together?</p>	<ul style="list-style-type: none"> • No, even if people using the service do hold genuine and valid tenancy agreements, this in itself does not mean that the accommodation and care is not being provided together. It will depend on the overall picture of accommodation and care provision. • The terms of the tenancy, the extent to which the rights of occupation may be linked to the care, or a care provider, will be important. It may also indicate that the tenancy is not independent of the care provider. • In some cases, there may be one contract that covers the care and accommodation or one over-arching framework agreement or contract (such as a management agreement which covers the sharing of landlord and/or care functions). You should consider whether the terms of the agreement mean that the accommodation and personal care are provided as one service.
<p>10. What evidence can support a judgement about whether a regulated activity is being provided, and which it is?</p>	<ul style="list-style-type: none"> • There is a range of evidence that our inspectors can to support them in making a judgement. • Information supplied by the care provider: <ul style="list-style-type: none"> ○ Statement of purpose ○ Job descriptions ○ Contracts of the people who use the service ○ Commissioning contracts ○ Original invitations to tender (especially for new build properties) ○ Assessments of needs ○ Care plans ○ Service brochure ○ Service advertisements. • Is there a tenancy agreement? We may ask to see a copy, along with the policy for how they are to be agreed. <ul style="list-style-type: none"> ○ Who has signed the tenancy? ○ Did the tenant have mental capacity to enter into a tenancy? ○ If another person signed, did they have legal authority to sign it on behalf of the person using the service? In particular, a care worker for the care provider or for the commissioning local authority will not usually have legal authority to do so ○ Whether a tenancy has been genuinely executed

	<p>(and therefore who it is signed by) can give evidence about whether there is separation between accommodation and care. A tenancy which suggests exclusive possession and rights for example, with no link to any care was relevant to whether someone was in their own home, but can also provide evidence that there is separation between accommodation and care.</p> <ul style="list-style-type: none"> • Do contracts represent the total picture – sometimes there may appear to be separate contracts, but with an over-arching Framework Agreement (contract) linking the contracts. • We can speak with the people to find out about the service, including: <ul style="list-style-type: none"> ○ People who use the service and their representatives, asking about the type of service they receive. Where someone lacks the capacity to contribute to our assessment, and has no representative, we may be able to ask the local authority to appoint an ‘independent mental capacity advocate [IMCA]’. ○ Managers or providers in person (by phone, letter or email) ○ Health and/or social care professionals/ commissioners. • We may need to visit the service to get the information we need by observing practice and speaking to people.
<p>11. What happens if we apply to cancel a regulated activity or vary a condition, but CQC thinks the service being provided needs to remain registered as it is?</p>	<ul style="list-style-type: none"> • This guidance also applies to existing providers registered for the regulated activity of accommodation for persons who require nursing or personal care. We would use the guidance when a provider applies to vary a condition or cancel their registration for this activity, with the aim of continuing to operate the service in a different way. • We can refuse an application for de-registration or variation. If we do, we need clear evidence of why we are making a refusal, although it is for the applicant to justify the application. • Providers have a right to appeal the refusal. They can make written representations if they do not agree with the notice of proposal to refuse. If the proposal is upheld and becomes a decision, they have a right of appeal to the First-tier Tribunal.

	<ul style="list-style-type: none"> Information on representations and appeals is available on our website www.cqc.org.uk.
<p>12. What information is available for people who are looking to set up supported living services?</p>	<ul style="list-style-type: none"> If you are looking to set up a supported living service, you can contact us on 03000 616161 or email enquiries@cqc.org.uk. We can point you to the relevant guidance documents on our website and talk to you about where your proposals would fit in the regulatory framework. There are also guides available from the Department of Health and other organisations – see appendix 4. The Department of Health has produced a guide to making the move to being a supported living service. It is called <i>Feeling Settled, Guide for those involved in a changing a service from a Residential Care Home to Supported Living where the people stay in the same place</i>. It is available on their website www.dh.gov.uk.

**Appendix 1:
Flow chart**



Appendix 2: Historical information

Court of Appeal decision between Andrew Moore and others and Care Standards Tribunal and Commission for Social Care Inspection.

The Court of Appeal judgement in the Moore case confirmed that provision of accommodation together with nursing or personal care was a key factor in determining whether an establishment was a care home:

- Although the accommodation and care have to be provided together to satisfy the care home definition, this need not be by the same company or individual. The facts surrounding how the two function in practice will need to be examined in each instance.
- Separation of the accommodation provider from the care provider will not necessarily mean that a care home does not exist – the overall picture of provision is key. The degree of separation is important in looking at whether the two bodies continue to have a coordinating role, organising the provision of accommodation and care. It is possible that two different legal bodies can be required to register as a partnership for the regulated activity of accommodation for persons with nursing or personal care.
- The existence of a tenancy agreement between an accommodation provider and tenant is not conclusive in determining whether a care home exists. A tenancy agreement governs the relationship between a landlord and tenant and encompasses various rights and responsibilities – such agreements can be in place without the establishment ceasing to be a care home.

The points above related to whether the establishment in question was a care home under the Care Standards Act 2000. Under the Health and Social Care Act 2008, the regulated activity of accommodation for persons who require nursing or personal care also contains the definition of accommodation together with nursing or personal care. These principles from the Moore case therefore remain relevant.

Appendix 3: Mental Capacity Act

The Mental Capacity Act (MCA) with the Deprivation of Liberties Safeguards (DoLS) came fully into force on 1 April 2009. The Act governs decision-making on behalf of adults who may not be able to make particular decisions because they do not have capacity to do so. This could be because of long term, short term or intermittent conditions, for example:

- A learning disability
- An illness such as dementia
- Mental health problems.

The Act and its main Code of Practice set out:

- How a person's capacity to take a decision should be assessed
- Who can take particular decisions on someone else's behalf
- When and how a decision can be taken.

Providers need to be familiar with the Act in relation to how all significant decisions are taken about such a person, such as where they live, who they have contact with, and how they are cared for or treated. It is never appropriate for providers to take such decisions alone.

The Act also describes the circumstances in which a person's liberty can be restricted, or in which they can be deprived of their liberty, when they lack capacity. To do either is a very serious step, but in particular a deprivation of liberty. There is a separate Code of Practice on the Deprivation of Liberty Safeguards, which describe how those carrying on care homes and hospitals can apply for authorisation to a local authority or primary care trust for authority to deprive a person of their liberty.

A person living in any other kind of setting – including in supported living accommodation – can normally only be deprived of their liberty by the Court of Protection.

It therefore follows that, if the appropriate registration is for personal or nursing care without accommodation, the care provider, the accommodation provider, the commissioners, and their staff, cannot use the DoLS, as they only relate to care homes or hospitals. Nor can they normally purport to take decisions, depriving a service-user of his/her liberty, based on what they see as that person's 'best interests' – if it is a deprivation of liberty, and not merely a restriction, an Order of the Court of Protection is normally needed.

We have provided separate guidance in relation to the Mental Capacity Act, and the Deprivation of Liberty Safeguards. You can read the guidance by clicking [here](#)

Providers must ensure that they and relevant staff know about the Act and its codes of practice. The MCA is a 'relevant enactment' for registration under the Health and

Social Care Act purposes. This means that compliance with it is taken into account for registration and monitoring of compliance purposes.

Appendix 4: Further information

Court of Appeal decision between Andrew Moore and others and Care Standards Tribunal and Commission for Social Care Inspection:

www.bailii.org/ew/cases/EWCA/Civ/2005/627.html

Department of Health Guidance: 'Supported Housing and Care Homes – Guidance on Regulation' August 2002. This guidance includes the Department of Health's definitions of personal care as triggers for registration:

www.dh.gov.uk/assetRoot/04/06/02/47/04060247.pdf

Feeling Settled Project: Guide for those involved in a changing a service from a Residential Care Home to Supported Living where the people stay in the same place:

www.valuingpeoplenow.dh.gov.uk/valuing-people-now/housing
www.ndti.org.uk/publications/ndti-insights/

CQC's website includes information about the Mental Capacity Act with links to various resources that will be useful for social care providers:

[Mental Capacity Act information](#)

The Care Services Improvement partnership guidance on the development of extra care housing:

Extra Care Housing Toolkit at www.icn.csip.org.uk/housing/