

STATUTORY INSTRUMENTS

2021 No. xxxx

NATIONAL HEALTH SERVICE, ENGLAND

SOCIAL CARE, ENGLAND

PUBLIC HEALTH, ENGLAND

**The Health and Social Care Act 2008 (Regulated Activities)
(Amendment) Regulations 2021**

Made

xx February 2021

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 8, 20(1) to (5A), 35, 86(2) and (4), 87(1) and (2) and 161(3) and (4) of the Health and Social Care Act 2008⁽¹⁾.

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

A draft of these Regulations was laid before Parliament in accordance with section 162(3) of the Health and Social Care Act 2008, and was approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2021.

(2) These Regulations come into force on the day after the day on which these Regulations are made.

Amendment of Regulation 9

2.— (1) Regulation 9 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 is amended as follows.

(2) After Regulation 9, paragraph (3), sub-paragraph (i), insert –

¹ [2008 c. 14](#). Section 20 of the Health and Social Care Act 2008 (“the 2008 Act”) was amended by section 81 of the Care Act [2014 \(c. 23\)](#). Section 161(3) of the 2008 Act was amended by section 294(4) of the Health and Social Care Act [2012 \(c. 7\)](#).

“(j) facilitating face to face contact between the service user and persons significant to the service user so as to meet the service user’s needs and preferences, having particular regard to their emotional and psychological needs;

(k) where the registered person determines following an individualised risk assessment that unrestricted face to face contact between significant persons and the service user is not possible, facilitating face to face contact with the significant person or persons whom the registered person reasonably believes best meets the needs and preferences of the service user;

(l) where the registered person determines following an individualised risk assessment that no face to face contact between any significant persons and the service user is possible, facilitating contact with significant persons in such other ways as best meets the needs and preferences of the service user and is in accordance with the individualised risk assessment.”

(4) After Regulation 9, paragraph (6). insert –

“(7) In this regulation –

“face to face contact” means contact without fixed physical barriers between the service user and the significant person, but includes contact where the service user and/or relevant person or persons are wearing appropriate personal protective equipment if such is required to prevent or control the spread of infections, including those that are health care associated.

“an individualised risk assessment” means a risk assessment which considers:

(a) The risks to the health and well-being of the service user both of having and not having face to face to contact with either two or more significant persons (for purposes of paragraph 3, sub-paragraph (k)) or one relevant person (for purposes of paragraph 3, sub-paragraph (l));

(b) The risks to the health and well-being of other service users arising from the registered person facilitating face to face contact between the service user and a person or persons significant to that service user; and

(c) The risks to the health and well-being of the service user (and to other service users) of alternative options for contact to minimise the risks identified in (a) and (b).

“significant person” means any person falling within section 4(7) sub-paragraphs (a) to (d) of the 2005 Act (whether or not the service user lacks capacity for purposes of the 2005 Act to decide whether or not to have face to face contact with them) and “person significant to the service user” is to be read accordingly.

Signed by the authority of the Secretary of State for Health.

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Minister of State,
Department of Health

xxx February 2021