

# Housing with care

Guidance on regulated activities for  
providers of supported living and  
extra care housing

October 2015

# Introduction

Our [scope of registration](#) guidance, which is available on our website, lists all of the regulated activities that different care providers may need to register for.

This supplementary guidance clarifies the main differences between the regulated activities 'Accommodation for persons who require nursing or personal care' and 'Personal care' and how they apply to 'supported living' and 'extra care housing' (referred to jointly as 'housing with care' in this guidance).

This guidance also sets out indicators to help distinguish between the two regulated activities.

## Glossary of key terms

By **provider** we mean an organisation that has been registered with CQC to provide a regulated activity. Please note that housing associations are also registered as providers with the Homes and Communities Agency; we will refer to them in this document as 'housing providers'.

By **supported living** we mean schemes that provide personal care to people as part of the support that they need to live in their own homes. The personal care is provided under separate contractual arrangements to those for the person's housing. The accommodation is often shared, but can be single household. Supported living providers that do not provide the regulated activity 'Personal care' are not required by law to register with CQC.

By **extra care housing**, we mean purpose-built (or purpose adapted) single household accommodation that is owned or occupied under an occupancy agreement. The accommodation is in a building or campus of similar households specifically designed to facilitate the delivery of care to people, either now or when they need it in the future. These schemes are also known under other labels; for example 'sheltered housing' or 'assisted living', or 'retirement homes'.

By **Shared Lives** we mean accommodation that is lived in under an occupancy agreement, where the premises are owned or tenanted by another person who has been approved as a carer by a 'Shared Lives' scheme that is registered to provide 'Personal care'.

By **domiciliary care** we mean care delivered to people living in single household accommodation that is owned or occupied by the person receiving care, and that occupation is entirely independent of the care arrangements (which remain at all times a visiting arrangement).

**Occupancy agreements** include tenancy agreements, licensing agreements, licences to occupy premises, and leasehold agreements.

## 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 pay a fine.
2. It is a provider's responsibility to make sure that they are correctly registered to carry on the services they provide.
3. Where providers of care are correctly registered, people can expect to receive a safe, good quality service that respects their dignity, protects their rights and meets their care needs.
4. Some providers have sought to promote people's choice and control, and to respond to trends in market choice and council commissioning policies, by no longer providing the traditional 'care home' model. Instead, they have developed a range of independent living options such as 'supported living' and 'extra care housing' schemes.
5. Supported living providers that do not provide the regulated activity 'Personal care' do not have to be registered with CQC.
6. It is the nature of the care being provided by an organisation that determines if registration is required and which regulated activity is applicable, not local commissioning arrangements and/or what kinds of premises are involved.
7. Most supported living and extra care housing services that provide personal care will need to be registered with CQC to carry on the regulated activity 'Personal Care'. For this to apply there must be separate legal agreements for the accommodation and the personal care.
8. Most supported living and extra care housing services require the provider to be registered for the regulated activity 'Personal care'. In some cases they may need to be registered for the regulated activity 'Accommodation for persons requiring nursing or personal care'. The difference will depend upon the contractual arrangements in place for the delivery of the care and of the housing. Generally speaking, where there are separate legal agreements for the accommodation and for the personal care we register and regulate only the personal care provider.
9. The Deprivation of Liberty Safeguards only apply to hospitals and care homes. They do not apply to housing with care services. The Court of Protection must authorise deprivation of liberty designed to ensure that a person gets the care or treatment they need in any other setting, including supported living or extra care housing.
10. Taking on an occupancy agreement means entering a contract. If a person does not have mental capacity to make decisions about entering into a legal agreement, any decision made on their behalf must be made in their best interests, and in a way that meets the requirements of the Mental Capacity Act 2005 (MCA).

# Guidance

<p><b>1. Who needs to register?</b></p>	<ul style="list-style-type: none"> <li>• Any provider who carries on a regulated activity needs to register.</li> <li>• This guidance focuses on the regulated activities:             <ul style="list-style-type: none"> <li>○ Accommodation for persons who require nursing or personal care.</li> <li>○ Personal care.</li> </ul> </li> </ul>
<p><b>2. How do we register providers under the Health and Social Care Act 2008?</b></p>	<ul style="list-style-type: none"> <li>• Providers must be registered for the correct regulated activity. The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 sets out the different regulated activities.</li> <li>• When a provider applies to be registered to carry on a regulated activity, they tell us:             <ul style="list-style-type: none"> <li>○ The location where the activities are carried on at, or from where they are organised or managed.</li> <li>○ The service type (for example care home, supported living service, extra care housing scheme or domiciliary care agency).</li> </ul> </li> <li>• The provider must be registered to carry on the regulated activity at or from a particular location or locations. Locations will be shown as a condition on the provider’s registration.</li> <li>• If the provider carries on a regulated activity at or from a location not listed as a condition, they are in breach of their conditions of registration. We can take enforcement action if this happens.</li> <li>• Where a service provides accommodation <b>together with</b> personal care, the location will be the place where that activity is carried on. This applies to the regulated activity ‘Accommodation for persons who require nursing or personal care’.</li> <li>• For more information on locations, see our guidance <i>What is a ‘location’?</i>, available <a href="#">here</a>.</li> <li>• Service types are not part of a provider’s legal registration, but they do provide us and the public with useful information about the kind of service that is being provided. We have produced guidance (<i>Quick reference guide to regulated activities by service types</i>) that explains which regulated activities are likely to apply to the different kinds of services. You can read it <a href="#">here</a>.</li> </ul>

	<ul style="list-style-type: none"> <li>The following is a summary of that document:</li> </ul> <table border="1" data-bbox="448 282 1385 828"> <thead> <tr> <th></th> <th>Providing just personal care</th> <th>Providing accommodation together with nursing or personal care</th> </tr> </thead> <tbody> <tr> <td>Care home without nursing</td> <td>Highly unlikely</td> <td>Highly likely</td> </tr> <tr> <td>Care home with nursing</td> <td>Highly unlikely</td> <td>Highly likely</td> </tr> <tr> <td>Domiciliary care</td> <td>Highly likely</td> <td>Highly unlikely</td> </tr> <tr> <td>Extra care housing</td> <td>Highly likely</td> <td>Highly unlikely</td> </tr> <tr> <td>Supported living</td> <td>Highly likely</td> <td>Highly unlikely</td> </tr> </tbody> </table> <ul style="list-style-type: none"> <li>Please note that providers of supported living and extra care housing services can only register for the regulated activity 'Personal care' (rather than 'accommodation for persons who require nursing or personal care') if there is clear and sufficient separation between the provision of the accommodation and the provision of the care.</li> <li>The provider should pick the service type which is the closest match to the service they are offering.</li> <li>Only providing a concierge or property management service would be unlikely to fall within the scope of registration.</li> </ul>		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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<p>3. What type of service would require a provider to be registered for the regulated activity <u>'Accommodation for persons who require nursing or personal care'</u>?</p>	<ul style="list-style-type: none"> <li>If a provider is offering residential accommodation <b>as a single package</b> that includes nursing or personal care, they must be registered in respect of the regulated activity 'Accommodation for persons who require nursing or personal care'.</li> <li>Section 8 below sets out <b>indicators</b> that help identify if the regulated activity 'Accommodation for persons who require nursing or personal care' is being provided.</li> <li>The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 defines 'personal care' as: <ul style="list-style-type: none"> <li>(a) <b>Physical assistance</b> given to a person in connection with: <ul style="list-style-type: none"> <li>Eating or drinking (including the administration of parenteral nutrition)</li> <li>Toileting (including in relation to the process of menstruation)</li> <li>Washing or bathing</li> <li>Dressing</li> <li>Oral care, or</li> </ul> </li> </ul> </li> </ul>																		

	<ul style="list-style-type: none"> <li>○ The care of skin, hair and nails (with the exception of nail care provided by a chiropodist or podiatrist); or</li> <li>(b) The <b>prompting</b>, 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.  This prompting does not include, for example, support that is not personal care, for example checking on person’s emotional well-being.</li> </ul> <ul style="list-style-type: none"> <li>● The legislation defines nursing care as: Any services provided by a nurse and involving: <ul style="list-style-type: none"> <li>(a) the provision of care; or</li> <li>(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.</li> </ul> </li> <li>● The regulated activity of ‘accommodation for persons requiring nursing or personal care’ does not apply to the provision of: <ul style="list-style-type: none"> <li>○ Accommodation to an individual by a Shared Lives carer under the terms of a Shared Lives carer agreement; or</li> <li>○ A school, or</li> <li>○ An institution within the further education sector which does not provide accommodation together with personal care to more than 10% of its students.</li> </ul> </li> </ul>
<p><b>4. What type of service would require a provider to be registered for <u>‘Personal care’</u>?</b></p>	<ul style="list-style-type: none"> <li>● Section 3 above describes how the regulated activity ‘Accommodation for persons requiring nursing or personal care’ applies. The ‘personal care’ in the title has the same legal definition as that in the regulated activity ‘Personal care’.</li> <li>● The regulated activity ‘Personal care’ covers the provision of personal care for people who need it because of old age, illness or disability, where the care is provided in the place they are living at the time it is provided. This might include the care provided by a domiciliary care agency.</li> <li>● The regulated activity ‘Personal care’ is different from the regulated activity ‘Accommodation for persons who require nursing or personal care’, even though the delivery of personal care is incorporated within it.</li> <li>● Providers registered in respect of ‘Accommodation for persons who require nursing or personal care’ do not also need to register separately in respect of ‘Personal care’.</li> <li>● People’s own homes are not regulated under the regulated activity</li> </ul>

	<p>‘Personal care’; only the care provided is regulated and potentially, inspected. The ‘location’ shown on the provider’s certificate of registration will be the premises where the service is carried on <b>from</b>, for example the office where the service is organised. However, the service will be delivered to people in their own homes. For more information on locations, see our guidance, <i>What is a ‘location’?</i>, available <a href="#">here</a>.</p> <ul style="list-style-type: none"> <li>• If a care home provider wants to also provide personal care through a <b>separate service</b>, for example a domiciliary care agency in addition to a care home, then registration to provide <b>both</b> activities would be required.</li> <li>• By law, the following services do not need to register with us: <ul style="list-style-type: none"> <li>○ Employment agencies or businesses.</li> <li>○ Services introducing care staff, with no further involvement in the direction or control of the care provided. Further guidance can be found <a href="#">here</a>.</li> <li>○ A personal arrangement between an individual and a carer to meet their own care requirements, including services purchased through personal budgets or direct payments.</li> <li>○ Personal care provided by a person managing a prison or similar custodial establishment.</li> <li>○ If a person is receiving personal care but it is not being provided in the place where they are living at the time the care is provided (for example day services).</li> <li>○ Where the support being offered is not within the definition of personal care, such as cleaning, cooking and shopping, or supervising the person to take medicine (as opposed to ‘administering’) that has been prescribed by their doctor.</li> </ul> </li> <li>• More detail on these exceptions can be found in: <ul style="list-style-type: none"> <li>○ The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014; Schedule 1, paragraph 1.</li> <li>○ CQC guidance <a href="#">‘The scope of registration’</a>.</li> </ul> </li> </ul>
<p><b>5. What is a <u>supported living or extra care housing service</u>?</b></p>	<ul style="list-style-type: none"> <li>• Supported living and extra care housing are where: <ul style="list-style-type: none"> <li>○ People live in their own home and receive care and support to promote their independence.</li> <li>○ Care and support can be continuous or periodic, but is always tailored to meet the supported person’s individual needs. It should enable people who need personal care to live as independently as possible in accommodation that is genuinely ‘their own’.</li> <li>○ There is a real separation between the care a person receives and their accommodation. The legal agreements for the provision of care and accommodation are separate.</li> </ul> </li> </ul>

- Supported living and extra care housing can be provided in a wide variety of ways and kinds of premises.
- The personal care and accommodation parts of supported living and extra care housing are covered by separate agreements. Both care and accommodation can be paid for privately where people have the means to do so. Where they do not, people can claim housing benefit to cover their accommodation and support costs, and local authorities fund personal care through care management arrangements, either directly or through personal budgets. The method of funding is not a defining characteristic of CQC registration.
- The terms under which premises are occupied should be set out in a lawful occupancy agreement. Taking on an occupancy agreement means entering a legal contract. To do this a person must have mental capacity to make relevant decisions. Where they do not do so only a person with legal authority can sign an agreement on someone's behalf (someone with legal power of attorney for financial and property-related decisions (LPA) or a court deputy with relevant powers, for example).
- Supported living accommodation is sometimes occupied under an unsigned occupancy agreement. This can be appropriate when a person does not have an LPA (someone with legal power of attorney for financial and property-related decisions) or court deputy, and arranging legal authority is going to take too long to secure an appropriate placement. The Office of the Public Guardian has advised that this is acceptable so long as valid legal authority is applied for as soon as possible. Those involved should make sure that the placement was made in a way that is demonstrably in the person's best interests, with clear records.
- People normally have 'exclusive possession' of at least part of their accommodation. Exclusive possession means that the person can decide who can enter their accommodation, and when they can enter. Exclusive possession can cover a whole house or flat, or just the person's bedroom and/or other private areas.
- Some supported living premises are occupied under a licence (effectively 'permission') which does not necessarily give 'exclusive possession', in that they can require a person to allow service staff to enter at any time. However it is important to remember that any decisions about care or treatment provided to a person who lacks the mental capacity to consent to it must be taken in their best interests. This is required by the MCA.
- If a care home changes to a supported living service, it is likely that the regulated activity would change from 'Accommodation for persons who require nursing or personal care' to 'Personal care'.
- For a service to be correctly registered for the regulated activity 'Personal care', there must be a real separation between the personal care and accommodation agreements. They must not be



	<p>provided as a single package under one agreement. Sections 7 and 8 below give indicators to help decide which regulated activity is being provided.</p>
<p><b>6. Do all housing with care services need to be registered by CQC?</b></p>	<ul style="list-style-type: none"> <li>• No, a provider only needs to be registered when they are carrying on a regulated activity. The relevant regulated activities are set out and described in sections 3 and 4 above.</li> <li>• The provider must decide whether they need to register and which regulated activity they are providing.</li> <li>• We will assess the provider’s application and make a decision about whether to register the service. Separate guidance is available <a href="#">here</a> about our registration process.</li> <li>• If a provider is carrying on a regulated activity they <b>must</b> apply for registration. If they do not do so they would be committing an offence.</li> </ul>
<p><b>7. What are the indicators that the regulated activity ‘<u>personal care</u>’ is being provided?</b></p>	<ul style="list-style-type: none"> <li>• For the regulated activity ‘Personal care’ to apply, the agreements covering the accommodation and the care must be separate. They must not be provided as a single package under one agreement.</li> <li>• This is different to the regulated activity ‘Accommodation for persons who require nursing or personal care’, where accommodation and care are provided <b>together as a package</b>.</li> <li>• Establishing genuine separation can be difficult. The National Development Team for Inclusion (NDTi) have developed a quick test called the ‘Real Tenancy Test’. This can be used to help decide which regulated activity is being provided by a supported living service. The full guidance is available <a href="#">here</a>.</li> <li>• These indicators are not conclusive in their own right, so it is important to think about the whole picture. They will not all apply in every case: <ul style="list-style-type: none"> <li>○ Personal care, as defined in section 3 above, is being provided to the person in their own home. <ul style="list-style-type: none"> <li>— The providers of the care and accommodation are <b>not</b> usually the same legal entity. Even where they are, there is a clear separation between the accommodation and the personal care being provided.</li> <li>— There are separate contracts in place for the personal care and accommodation being provided. There is no overarching agreement or contract in place restricting the supported person’s choice about who provides their personal care.</li> <li>— The provision of personal care and accommodation run separately and do not rely on each other.</li> <li>— There are <b>separate</b> agreements in place for the accommodation and personal care being provided, when they are provided by the <b>same</b> legal entity. The supported person has a genuine choice about who provides their personal or nursing care.</li> </ul> </li> </ul> </li> </ul>

- The way the service is purchased (by a local council, NHS body or the individual) allows the agreements for care and accommodation to be separate. This gives the supported person a real choice about who provides the service.
- The supported person has unrestricted access to every part of their home apart from any co-tenants' private space.
- Equipment (such as telephone lines, office equipment and files owned by the housing provider) that is not related to the supported person's care is not kept in their home.
- It is important to look at how closely the two entities work together to coordinate or organise the provision of accommodation and personal care.
  - The care and accommodation providers coordinate with each other or exchange information to support the person living there (for example, sharing protocols about the good functioning of the building, or the care worker asking for adaptations, such as thermostatic valves being added to radiators).
  - Decisions such as agreeing a new occupancy agreement, rent rises or giving notice to quit the accommodation are made by the provider that controls the accommodation. The personal care provider does **not need** to be involved in making these decisions, although they may support their client to understand the arrangements.
  - The landlord and support staff do not have unrestricted access to the person's home without authorisation or unless they give reasonable notice.
- The person receiving personal care can choose to do the following without affecting their occupancy or accommodation agreement/contract:
  - Stop receiving the personal care.
  - Arrange for an alternative provider or carer to deliver their personal care.
  - Not allow the care provider or the housing provider access if they choose.
- Housing tenure in extra care and retirement villages should be based on a tenancy, long lease or freehold and the occupier should have control over 'their own front door'.
- However, extra care schemes or villages may operate a model that requires residents to buy into a mandatory service. This may include overnight and emergency response, laundry or housekeeping, and might include/require a limited amount of personal care in specific circumstances. This is not part of the day-to-day personal care package.
- Charges for the mandatory service and what it covers should

	<p>be clearly set out, including details of any personal care that can be provided as part of it. <b>The tenant or owner should have free choice over who provides normal day to day personal care in their own home. Core service providers sometimes offer a full normal day to day personal care service as well; this is perfectly acceptable as long as people can choose another provider if they want to (and one is available).</b></p> <ul style="list-style-type: none"> <li>○ Where mandatory services are in place the provision should still be registered as 'personal care'.</li> </ul>
<p><b>8. What are the indicators that <u>'Accommodation for persons who require nursing or personal care'</u> is being provided?</b></p>	<ul style="list-style-type: none"> <li>• The indicators below can help you to decide whether accommodation and personal care are being provided <b>together as a 'package'</b>. These indicators are not conclusive in their own right so it is important you consider the whole picture. They will not all apply in every case: <ul style="list-style-type: none"> <li>○ The provider of the care and the accommodation is normally the <b>same</b> legal entity, which can employ one group of staff. There is no clear separation between the two parts of the service, which are provided as a <b>package</b>. The person using the service cannot choose to receive personal care from another provider.</li> <li>○ The providers of the care and the accommodation can sometimes be <b>different</b> legal entities, <b>but</b> the accommodation and personal care are provided as a <b>combined package</b>. For example, the service package could be provided by different companies within the same organisation group, or unrelated organisations working together. It is important to look at how the bodies work together to provide the service. The person using the service cannot choose to receive personal care from another provider.</li> <li>○ To receive accommodation, the supported person must accept personal care from the accommodation provider or a company that works with them to deliver the combined service.</li> </ul> <p>People using the service do not hold genuine and valid occupancy agreements.</p> </li> </ul>
<p><b>9. If people have an occupancy agreement, or 'licence to occupy' does this always mean the service is <u>not</u> providing care and accommodation together?</b></p>	<ul style="list-style-type: none"> <li>• No. Even if people using the service do have valid occupancy agreements, accommodation and personal care can still be provided as a single package. It is important to consider the whole picture of the service being provided.</li> <li>• The terms of the occupancy agreement are important. CQC inspectors may look at whether the rights of occupation are linked to the provision of care by a particular care provider in a way that links them as a single package.</li> <li>• In some cases, single contracts cover both the care and accommodation being provided under an overarching management agreement (or similar), which shares landlord and care responsibilities. You should consider if the terms of the agreement</li> </ul>

	<p>mean that the accommodation and personal care are provided as a single, inseparable package.</p>
<p><b>10. Liberty, restraint and deprivation of liberty</b></p>	<ul style="list-style-type: none"> <li>• Any decisions about care or treatment provided to a person who lacks the mental capacity to consent to it must be taken in their best interests. This is required by the MCA.</li> <li>• Decisions about restricting a person’s liberty, including restraining them, must also be taken in accordance with the MCA if they do not have mental capacity to consent to it. The restraint must be in their best interests, and proportionate to the likelihood and seriousness of harm that could occur.</li> <li>• Health and social care providers must always act in the way that is the least restrictive of people’s rights and freedoms when exercising restraint or other controls. In addition, this can only be done when it is in their best interests (as described in the Code of Practice to the MCA). If the degree of restrictions applied to a person lacking capacity amount to deprivation of their liberty this must be authorised in accordance with Deprivation of Liberty Safeguards (DoLS) or by the Court of Protection.</li> <li>• DoLS can only be used to authorise the deprivation of someone’s liberty in a hospital or care home. In other settings, including supported living and extra care housing schemes, the service provider must work with the body that has commissioned the service in applying to the Court of Protection for authorisation to do so.</li> <li>• Additional information about the MCA can be found at appendix 3 below.</li> <li>• Please follow these links for separate guidance on the <a href="#">MCA</a> and <a href="#">DoLS</a>.</li> </ul>
<p><b>11. What evidence can support a judgement about whether a regulated activity is being provided, and which it is?</b></p>	<ul style="list-style-type: none"> <li>• Information supplied by the care provider: <ul style="list-style-type: none"> <li>○ Statement of purpose.</li> <li>○ Job descriptions.</li> <li>○ Contracts of the people who use the service including the occupancy agreement.</li> <li>○ Commissioning contracts.</li> <li>○ The original invitations to tender (especially for new build properties).</li> <li>○ Assessments of need.</li> <li>○ Care plans.</li> <li>○ Service brochure.</li> <li>○ Service advertisements.</li> </ul> </li> <li>• Our inspectors can ask to see a copy of occupancy agreements,</li> </ul>

along with policies and procedures for how they are discussed and agreed with tenants or their representatives and any commissioners.

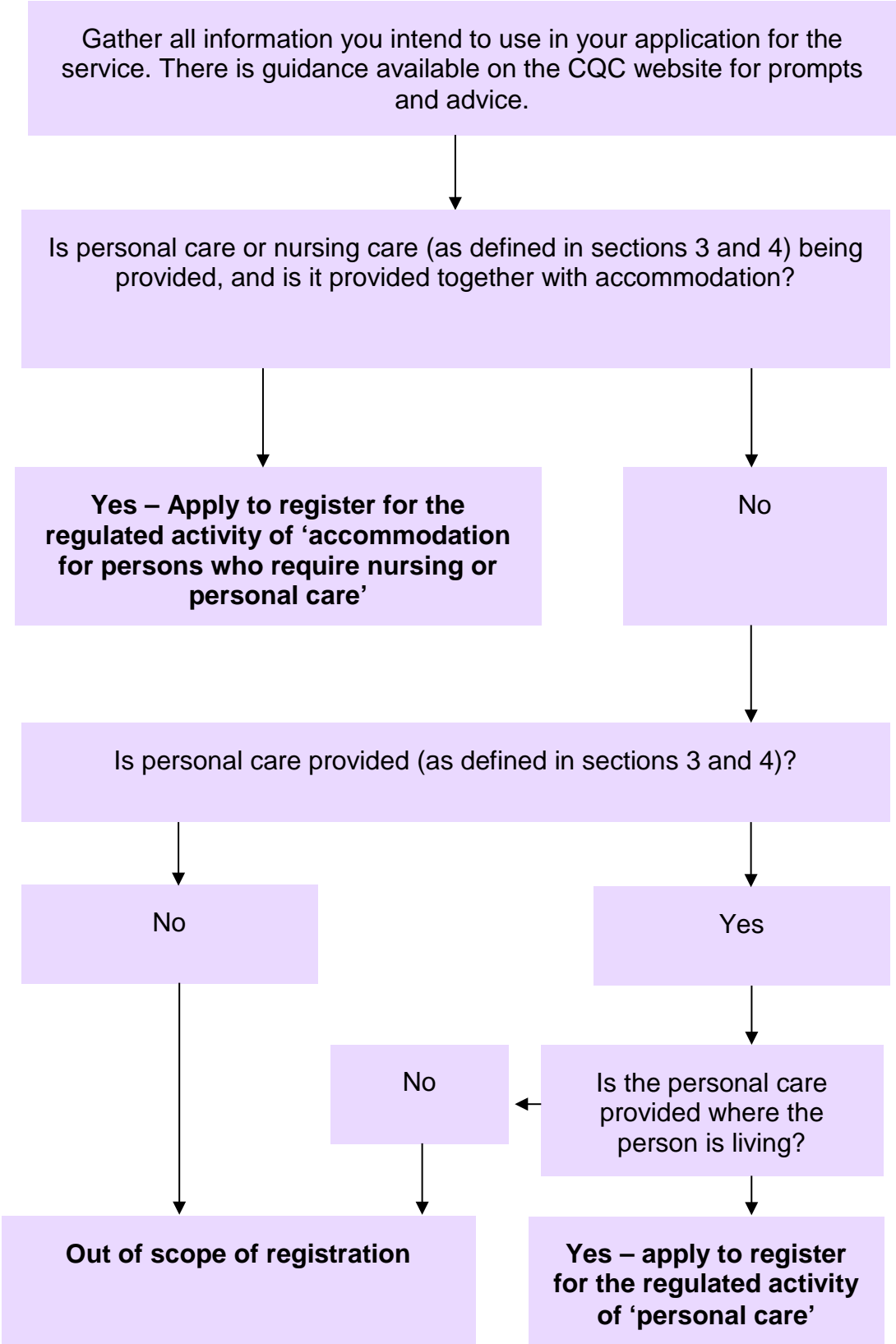
- We can check who has signed the occupancy agreement.
- We can consider whether there is any reason to doubt that the person had mental capacity to make decisions about signing their occupancy agreement when they signed it.
- If another person signed the occupancy agreement on behalf of the person using the service, we may check whether at the time of signing they had the legal authority to.
- Occupancy agreement processes being properly completed (including who it is signed by) can help to show whether there is genuine separation between accommodation and care; for example, an occupancy agreement that gives exclusive possession of the property (or part of it), and which does not link the occupancy to care being provided by a specific service.
- We may ask to see contracts representing the whole service. There may be separate contracts that impose an overarching Framework Agreement (contract) linking the housing with a specifically required care provider.
- We may speak with people to find out about the type of service received, including:
  - People who use the service and their relatives, friends or representatives. Where someone is unable to contribute to our assessment and has no relatives, friends or representatives to ask, their care plan may provide information.
  - Managers or providers.
  - Health and or care professionals/commissioners.
- We may visit the service to get the information we need by observing practice and speaking to people. We may also observe the physical layout of the premises. **Note, we will normally obtain the consent of the person or people using the service or their representative to enter their home. We will also normally liaise with the landlord when looking at the physical layout of communal areas.** The only circumstances when CQC can insist upon entry is where we have reasonable grounds to believe that 'accommodation for persons who require nursing or personal care' is being carried on at the address, rather than 'personal care'.

Please follow this link for separate guidance on [consent](#).
- CQC does not have powers to regulate accommodation where the service does not provide accommodation together with personal care as a package. Regulation 12 of the new Regulated Activities Regulations 2014 (which came into force on 1 April 2015) requires providers to deliver care in a safe way. The way in which care is

	<p>delivered must always take account of the premises and equipment used.</p> <ul style="list-style-type: none"> <li>• Where responsibility for safety is shared with others, care providers must ensure that care planning arrangements promote people's safety and welfare. So even if the personal care provider is not responsible for the premises, they are responsible for ensuring the care they provide there is safe. They must do all they reasonably can to work with people using the service and with other agencies and bodies to secure improvements when premises are unsafe.</li> </ul>
<p><b>12. What happens if a provider applies to cancel a regulated activity or vary a condition, but we think the service being provided needs to remain registered as it is?</b></p>	<ul style="list-style-type: none"> <li>• This guidance also applies to <u>existing</u> providers registered for the regulated activity 'Accommodation for persons who require nursing or personal care'. It can help us make a decision when a provider applies to vary a condition or cancel their registration for this activity, when they intend to carry on the service as a supported living scheme.</li> <li>• It is the responsibility of the provider to justify their application. We <b>can</b> refuse an application for registration cancellation or variation. If we do, we will set out evidence to support our decision.</li> <li>• Providers have a right to appeal if we propose to refuse their application, by making written representations if they do not agree with the notice of proposal to refuse. If the proposal is upheld and becomes a decision, providers have a right of appeal to the First Tier Tribunal.</li> <li>• Information about making representations and submitting appeals is included in the notice.</li> <li>• More information on registration is available <a href="#">here</a> on the CQC website.</li> </ul>
<p><b>13. What information is available to people who are looking to set up supported living services and extra care housing services?</b></p>	<ul style="list-style-type: none"> <li>• If we receive pre-registration enquiries or new applications for registration from providers looking to set up a supported living or extra care housing service, we will share this guidance with them. We will scrutinise any documents and information submitted by the provider to make our final decision. The provider may wish to seek their own legal advice.</li> <li>• We will direct the provider to the information about registration available on our website, for example guidance such as '<a href="#">The scope of registration</a>'.</li> <li>• The Department of Health has produced a guide to making the move to providing a supported living service. It is called <i>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</i>. It is available <a href="#">here</a>.</li> <li>• Further guides available from the Department of Health and other organisations can be found at appendix 4 below.</li> </ul>

# Appendix 1:

## Flow chart for providers considering whether to register



## 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 for the definition of care home to apply, they do not have to be provided by the same company or individual. In each case, how the accommodation and care are linked needs to be considered.
- Where the accommodation and the care providers are separate, it does not necessarily mean that the service provided is not a care home. The whole picture of the service being provided must be considered. It is important to look at the degree of separation between the two bodies where they coordinate with each other to organise the provision of accommodation and care. It is possible that two different legal entities can be required to register for the regulated activity of accommodation for persons with nursing or personal care.
- The existence of an occupancy agreement between an accommodation provider and tenant is not conclusive in determining whether a care home exists. An occupancy agreement governs the relationship between a landlord and tenant and sets out various rights and responsibilities. Agreements can be in place where the establishment is a care home.

The points above related to whether the service in question was an establishment, that is a care home under the Care Standards Act 2000, rather than an agency delivering only personal care. The decision made a difference to the way the service was regulated, and the fees payable. The model of registration is now different, and providers must now be registered to provide particular regulated activities, rather than to carry on an establishment or agency. The differences between the two different regulated activities – personal care, and accommodation for persons who require nursing or personal care that are outlined in this guidance – remain significant, however, and the definition of accommodation **together with** nursing or personal care is still an element of a decision about which of the two activities is being delivered. These principles from the Moore case therefore remain relevant.



## Appendix 3: Mental Capacity Act and occupancy agreements

Taking on an occupancy agreement means entering a contract. To do this a person must have legal capacity to do so. Legal capacity means:

- Being able to make a decision.
- Understanding there is a choice and wanting to enter a contract.
- Understanding the obligations of the contract (for example paying rent and keeping to the terms of the occupancy agreement).

The Court of Protection has issued guidance on occupancy agreements for people who may lack capacity, which is available at this [link](#).

- The first principle of the MCA is that a person must be assumed to have capacity, unless it is established that they lack capacity.
- The MCA then provides that a person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success. This means that people must be supported in every way possible to make a decision for themselves.
- If a person is unable to make a decision, even with support because they lack capacity, any decision made on their behalf must be made in their best interests, in accordance with the MCA. However, although the MCA allows best interest decisions to be made without the need to obtain formal authority, this does not extend to signing legal documents such as occupancy agreements.
- Where a person lacks capacity and an occupancy agreement is signed or entered into on their behalf, it must be done so lawfully. This means the occupancy agreement must be signed by someone with the legal authority to do so, such as Enduring or Lasting Power of Attorney for financial and business affairs (EPA/LPA) or a deputy or someone appointed by the Court of Protection for the purpose of signing the agreement. This should be before or at the time the person takes up their accommodation.
- To lawfully terminate an occupancy agreement on someone's behalf also requires the appropriate legal authority to do so.
- Some landlords will accept an unsigned occupancy agreement. In these circumstances, where there is a dispute or it is unclear whether the occupancy agreement is in a person's best interests it would be appropriate to make an application to the Court of Protection.

### About the Mental Capacity Act

Guidance in relation to the [Mental Capacity Act 2005](#) and the [Deprivation of Liberty Safeguards](#) is available here.

Providers need to be familiar with the Act in relation to how all significant decisions are made on someone's behalf. Significant decisions include where the person lives, who they have contact with, and the care and treatment they receive. It is never appropriate for providers to take significant decisions alone.

If a provider is appropriately registered to provide personal care, without accommodation, DoLS cannot be applied to authorise the deprivation of a person's liberty in relation to that service. In these circumstances, if the deprivation of the person's liberty is in their best interests, an order by the Court of Protection is needed. This would include settings such as supported living services, where the provider is registered to carry on the regulated activity 'Personal care'.

## 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](http://www.bailii.org/ew/cases/EWCA/Civ/2005/627.html)

Court of Protection guidance in relation to occupancy agreements when people lack capacity:

<http://www.housinglin.org.uk/Topics/type/resource/?cid=8433&msg=0>

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:

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:

[http://www.ndti.org.uk/uploads/files/Feeling\\_Settled\\_Final\\_Report\\_February\\_2011.pdf](http://www.ndti.org.uk/uploads/files/Feeling_Settled_Final_Report_February_2011.pdf)

<http://www.ndti.org.uk/publications/ndti-insights/insights-6-feeling-settled>

[http://www.ndti.org.uk/uploads/files/Insights\\_6\\_-\\_Feeling\\_Settled1.pdf](http://www.ndti.org.uk/uploads/files/Insights_6_-_Feeling_Settled1.pdf)

[http://www.ndti.org.uk/uploads/files/Insights\\_6\\_-\\_Additional\\_Resource\\_-\\_De-registration\\_checklist.pdf](http://www.ndti.org.uk/uploads/files/Insights_6_-_Additional_Resource_-_De-registration_checklist.pdf)

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](#)

### [Housing Learning and Improvement Network](#)

Formerly in the Department of Health, the Housing LIN has a website that includes comprehensive information on Extra Care Housing and a variety of resources about the housing aspects of the Mental Capacity Act, DoLs and safeguarding that will be useful for supported living providers: <http://www.housinglin.org.uk>