



# Protection of Freedoms Act 2012

## 2012 CHAPTER 9

### PART 5

SAFEGUARDING VULNERABLE GROUPS, CRIMINAL RECORDS ETC.

### CHAPTER 1

SAFEGUARDING OF VULNERABLE GROUPS

*Restrictions on scope of regulation: England and Wales*

#### **64 Restriction of scope of regulated activities: children**

- (1) Parts 1 and 3 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (regulated activity relating to children and the period condition) are amended as follows.
- (2) In paragraph 1(1)(b) (frequency and period condition for regulated activity), at the beginning, insert “except in the case of activities falling within sub-paragraph (1A),”.
- (3) After paragraph 1(1) insert—
  - “(1A) The following activities fall within this sub-paragraph—
    - (a) relevant personal care, and
    - (b) health care provided by, or under the direction or supervision of, a health care professional.
  - (1B) In this Part of this Schedule “relevant personal care” means—
    - (a) physical assistance which is given to a child who is in need of it by reason of illness or disability and is given in connection with eating or drinking (including the administration of parenteral nutrition),
    - (b) physical assistance which is given to a child who is in need of it by reason of age, illness or disability and is given in connection with—

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- (i) toileting (including in relation to the process of menstruation),
- (ii) washing or bathing, or
- (iii) dressing,
- (c) the prompting (together with supervision) of a child, who is in need of it by reason of illness or disability, in relation to the performance of the activity of eating or drinking where the child is unable to make a decision in relation to performing such an activity without such prompting and supervision,
- (d) the prompting (together with supervision) of a child, who is in need of it by reason of age, illness or disability, in relation to the performance of any of the activities listed in paragraph (b) (i) to (iii) where the child is unable to make a decision in relation to performing such an activity without such prompting and supervision,
- (e) any form of training, instruction, advice or guidance which—
  - (i) relates to the performance of the activity of eating or drinking,
  - (ii) is given to a child who is in need of it by reason of illness or disability, and
  - (iii) does not fall within paragraph (c), or
- (f) any form of training, instruction, advice or guidance which—
  - (i) relates to the performance of any of the activities listed in paragraph (b)(i) to (iii),
  - (ii) is given to a child who is in need of it by reason of age, illness or disability, and
  - (iii) does not fall within paragraph (d).

(1C) In this Part of this Schedule —

“health care” includes all forms of health care provided for children, whether relating to physical or mental health and also includes palliative care for children and procedures that are similar to forms of medical or surgical care but are not provided for children in connection with a medical condition,

“health care professional” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002.

(1D) Any reference in this Part of this Schedule to health care provided by, or under the direction or supervision of, a health care professional includes a reference to first aid provided to a child by any person acting on behalf of an organisation established for the purpose of providing first aid.”

(4) In paragraph 1(2)(c) (work activities at certain establishments to be regulated activity) for “any form of work (whether or not for gain)” substitute “any work falling within sub-paragraph (2A) or (2B)”.

(5) After paragraph 1(2) insert—

“(2A) Work falls within this sub-paragraph if it is any form of work for gain, other than any such work which—

- (a) is undertaken in pursuance of a contract for the provision of occasional or temporary services, and
  - (b) is not an activity mentioned in paragraph 2(1) (disregarding paragraph 2(3A) and (3B)(b)).
- (2B) Work falls within this sub-paragraph if it is any form of work which is not for gain, other than—
- (a) any such work which—
    - (i) is carried out on a temporary or occasional basis, and
    - (ii) is not an activity mentioned in paragraph 2(1) (disregarding paragraph 2(3A) and (3B)(b)), or
  - (b) any such work which is, on a regular basis, subject to the day to day supervision of another person who is engaging in regulated activity relating to children.
- (2C) The reference in subsection (2B)(b) to day to day supervision is a reference to such day to day supervision as is reasonable in all the circumstances for the purpose of protecting any children concerned.”
- (6) Also in paragraph 1—
- (a) in sub-paragraph (7) (meaning of “acting as a child minder”) for “section 79A of that Act” substitute “section 19 of the Children and Families (Wales) Measure 2010”,
  - (b) omit sub-paragraph (8) (exercise of functions of certain persons to be regulated activity),
  - (c) in sub-paragraph (9) (exercise of functions of persons mentioned in paragraph 4(1) to be regulated activity) for “a person mentioned in paragraph 4(1)” substitute “the Children’s Commissioner for Wales or the deputy Children’s Commissioner for Wales”,
  - (d) in sub-paragraph (9B) (exercise of certain inspection etc. functions to be regulated activity)—
    - (i) omit paragraph (a),
    - (ii) in paragraph (b) for “section 79U(3) of the Children Act 1989” substitute “section 41 or 42 of the Children and Families (Wales) Measure 2010”,
    - (iii) in paragraph (c) after “taken” insert “in relation to Wales” and for “that Act” substitute “the Children Act 1989”,
    - (iv) in paragraph (d) after “inspection”, where it first appears, insert “in Wales”,
    - (v) in paragraph (e) after “taken” insert “in relation to Wales”,
    - (vi) in paragraph (f) omit “18B or”,
    - (vii) in paragraph (h), after “inspection”, where it first appears, insert “in Wales”,
    - (viii) in paragraph (m) omit “48 or”,
    - (ix) in paragraph (n) after “inspection” insert “in Wales”, and
    - (x) omit paragraphs (p) to (t),
  - (e) in sub-paragraph (10) (inspectors) omit paragraphs (a), (ba), (d) and (e),
  - (f) omit sub-paragraph (12A) (accessing certain databases to be regulated activity),

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- (g) omit sub-paragraph (13A) (exercise of certain functions of Care Quality Commission to be regulated activity),
  - (h) in sub-paragraph (14) (day to day management or supervision of a person carrying out regulated activity to be regulated activity) for “(8), (9C), (11) or (13A)” substitute “(9A), (9C) or (11)”, and
  - (i) after sub-paragraph (14) insert—
    - “(15) Any activity which consists in or involves on a regular basis the day to day management or supervision of a person who would be carrying out an activity mentioned in sub-paragraph (1) or (2) but for the exclusion for supervised activity in paragraph 2(3A) or (3B) (b) or sub-paragraph (2B)(b) above is a regulated activity relating to children.”
- (7) In paragraph 2 (activities referred to in paragraph 1(1))—
- (a) in sub-paragraph (1) omit paragraph (d) (treatment and therapy provided for a child),
  - (b) in sub-paragraph (2)—
    - (i) for “, (c) and (d)” substitute “and (c)”, and
    - (ii) omit paragraph (d), and
  - (c) after sub-paragraph (3) insert—
    - “(3A) Sub-paragraph (1)(a) does not include any form of teaching, training or instruction of children which is, on a regular basis, subject to the day to day supervision of another person who is engaging in regulated activity relating to children.
    - (3B) Sub-paragraph (1)(b)—
      - (a) does not include any health care provided otherwise than by (or under the direction or supervision of) a health care professional, and
      - (b) does not, except in the case of relevant personal care or of health care provided by (or under the direction or supervision of) a health care professional, include any form of care for or supervision of children which is, on a regular basis, subject to the day to day supervision of another person who is engaging in regulated activity relating to children.
    - (3C) The references in subsections (3A) and (3B)(b) to day to day supervision are references to such day to day supervision as is reasonable in all the circumstances for the purpose of protecting any children concerned.
    - (3D) Sub-paragraph (1)(c) does not include any legal advice.”
- (8) In paragraph 3(1) (list of establishments referred to in paragraph 1(2) and (9C)) omit paragraph (c).
- (9) Omit paragraph 4 (list of persons referred to in paragraph 1(9)).
- (10) In paragraph 10(2) (the period condition) for “, (c) or (d)” substitute “or (c)”.

## **65 Restriction of definition of vulnerable adults**

- (1) Omit section 59 of the Safeguarding Vulnerable Groups Act 2006 (definition of vulnerable adults).
- (2) In section 60(1) of that Act (interpretation of Act)—
  - (a) after “In this Act—” insert—

““adult” means a person who has attained the age of 18;”, and”
  - (b) in the definition of “vulnerable adult”, for the words “must be construed in accordance with section 59” substitute “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”.

## **66 Restriction of scope of regulated activities: vulnerable adults**

- (1) Parts 2 and 3 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (regulated activity relating to vulnerable adults and the period condition) are amended as follows.
- (2) For paragraph 7(1) to (3) (main activities which are regulated activity) substitute—
  - “(1) Each of the following is a regulated activity relating to vulnerable adults—
    - (a) the provision to an adult of health care by, or under the direction or supervision of, a health care professional,
    - (b) the provision to an adult of relevant personal care,
    - (c) the provision by a social care worker of relevant social work to an adult who is a client or potential client,
    - (d) the provision of assistance in relation to general household matters to an adult who is in need of it by reason of age, illness or disability,
    - (e) any relevant assistance in the conduct of an adult’s own affairs,
    - (f) the conveying by persons of a prescribed description in such circumstances as may be prescribed of adults who need to be conveyed by reason of age, illness or disability,
    - (g) such activities—
      - (i) involving, or connected with, the provision of health care or relevant personal care to adults, and
      - (ii) not falling within any of the above paragraphs,as are of a prescribed description.
  - (2) Health care includes all forms of health care provided for individuals, whether relating to physical or mental health and also includes palliative care and procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.
  - (3) A health care professional is a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002.
  - (3A) Any reference in this Part of this Schedule to health care provided by, or under the direction or supervision of, a health care professional includes a reference to first aid provided to an adult by any person acting on behalf of an organisation established for the purpose of providing first aid.
  - (3B) Relevant personal care means—

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- (a) physical assistance, given to a person who is in need of it by reason of age, illness or disability, in connection with—
    - (i) eating or drinking (including the administration of parenteral nutrition),
    - (ii) toileting (including in relation to the process of menstruation),
    - (iii) washing or bathing,
    - (iv) dressing,
    - (v) oral care, or
    - (vi) the care of skin, hair or nails,
  - (b) the prompting, together with supervision, of a person who is in need of it by reason of age, illness or disability in relation to the performance of any of the activities listed in paragraph (a) where the person is unable to make a decision in relation to performing such an activity without such prompting and supervision, or
  - (c) any form of training, instruction, advice or guidance which—
    - (i) relates to the performance of any of the activities listed in paragraph (a),
    - (ii) is given to a person who is in need of it by reason of age, illness or disability, and
    - (iii) does not fall within paragraph (b).
- (3C) Relevant social work has the meaning given by section 55(4) of the Care Standards Act 2000 and social care worker means a person who is a social care worker by virtue of section 55(2)(a) of that Act.
- (3D) Assistance in relation to general household matters is day to day assistance in relation to the running of the household of the person concerned where the assistance is the carrying out of one or more of the following activities on behalf of that person—
- (a) managing the person’s cash,
  - (b) paying the person’s bills,
  - (c) shopping.
- (3E) Relevant assistance in the conduct of a person’s own affairs is anything done on behalf of the person by virtue of—
- (a) a lasting power of attorney created in respect of the person in accordance with section 9 of the Mental Capacity Act 2005,
  - (b) an enduring power of attorney (within the meaning of Schedule 4 to that Act) in respect of the person which is—
    - (i) registered in accordance with that Schedule, or
    - (ii) the subject of an application to be so registered,
  - (c) an order made under section 16 of that Act by the Court of Protection in relation to the making of decisions on the person’s behalf,
  - (d) the appointment of an independent mental health advocate or (as the case may be) an independent mental capacity advocate in respect of the person in pursuance of arrangements under section 130A of the Mental Health Act 1983 or section 35 of the Mental Capacity Act 2005,

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- (e) the provision of independent advocacy services (within the meaning of section 248 of the National Health Service Act 2006 or section 187 of the National Health Service (Wales) Act 2006) in respect of the person, or
  - (f) the appointment of a representative to receive payments on behalf of the person in pursuance of regulations made under the Social Security Administration Act 1992.”
- (3) Omit paragraph 7(4) (certain activities in care homes to be regulated activity).
  - (4) In paragraph 7(5) (day to day management or supervision of certain activities to be regulated activity) omit “or (4)”.
  - (5) In paragraph 7(7)(f) (inspection functions) omit “English local authority social services or”.
  - (6) Omit paragraph 7(8A) (certain functions of Care Quality Commission to be regulated activity).
  - (7) In paragraph 7(9) (functions of certain persons to be regulated activity) for “a person mentioned in paragraph 8(1)” substitute “the Commissioner for older people in Wales or the deputy Commissioner for older people in Wales”.
  - (8) Omit paragraph 8 (the persons referred to in paragraph 7(9) whose functions are to be regulated activity).
  - (9) In paragraph 10(2) (the period condition)—
    - (a) omit “or 7(1)(a), (b), (c), (d) or (g)”, and
    - (b) in paragraph (b), omit “or vulnerable adults (as the case may be)”.

## **67 Alteration of test for barring decisions**

- (1) For sub-paragraphs (2) and (3) of paragraph 1 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (automatic inclusion of person to whom paragraph applies in children’s barred list) substitute—
  - “(2) If the Secretary of State has reason to believe that this paragraph might apply to a person, the Secretary of State must refer the matter to ISA.
  - (3) If (whether or not on a reference under sub-paragraph (2)) ISA is satisfied that this paragraph applies to a person, it must include the person in the children’s barred list.”
- (2) For sub-paragraphs (2) to (4) of paragraph 2 of that Schedule to that Act (inclusion of person to whom paragraph applies in children’s barred list with right to make representation afterwards) substitute—
  - “(2) If the Secretary of State has reason to believe that—
    - (a) this paragraph might apply to a person, and
    - (b) the person is or has been, or might in future be, engaged in regulated activity relating to children,the Secretary of State must refer the matter to ISA.
  - (3) Sub-paragraph (4) applies if (whether or not on a reference under sub-paragraph (2)) it appears to ISA that—

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- (a) this paragraph applies to a person, and
  - (b) the person is or has been, or might in future be, engaged in regulated activity relating to children.
- (4) ISA must give the person the opportunity to make representations as to why the person should not be included in the children’s barred list.
- (5) Sub-paragraph (6) applies if—
- (a) the person does not make representations before the end of any time prescribed for the purpose, or
  - (b) the duty in sub-paragraph (4) does not apply by virtue of paragraph 16(2).
- (6) If ISA—
- (a) is satisfied that this paragraph applies to the person, and
  - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children,
- it must include the person in the list.
- (7) Sub-paragraph (8) applies if the person makes representations before the end of any time prescribed for the purpose.
- (8) If ISA—
- (a) is satisfied that this paragraph applies to the person,
  - (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children, and
  - (c) is satisfied that it is appropriate to include the person in the children’s barred list,
- it must include the person in the list.”
- (3) In paragraph 3 of that Schedule to that Act (inclusion in children’s barred list on behaviour grounds)—
- (a) in sub-paragraph (1)(a) for the words from “has” to “conduct,” substitute “—
    - (i) has (at any time) engaged in relevant conduct, and
    - (ii) is or has been, or might in future be, engaged in regulated activity relating to children,”
  - (b) in sub-paragraph (3), after paragraph (a) (and before the word “and” at the end of the paragraph), insert—
    - “(aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children,” and
  - (c) in sub-paragraph (3)(b) for “appears to ISA” substitute “is satisfied”.
- (4) In paragraph 5 of that Schedule to that Act (inclusion in children’s barred list because of risk of harm)—
- (a) in sub-paragraph (1)(a) for “falls within sub-paragraph (4)” substitute “—
    - (i) falls within sub-paragraph (4), and
    - (ii) is or has been, or might in future be, engaged in regulated activity relating to children,”
  - (b) in sub-paragraph (3), after paragraph (a) (and before the word “and” at the end of the paragraph), insert—



- “(aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to children,” and
- (c) in sub-paragraph (3)(b) for “appears to ISA” substitute “is satisfied”.
- (5) For sub-paragraphs (2) and (3) of paragraph 7 of that Schedule to that Act (automatic inclusion of person to whom paragraph applies in adults’ barred list) substitute—
- “(2) If the Secretary of State has reason to believe that this paragraph might apply to a person, the Secretary of State must refer the matter to ISA.
- (3) If (whether or not on a reference under sub-paragraph (2)) ISA is satisfied that this paragraph applies to a person, it must include the person in the adults’ barred list.”
- (6) For sub-paragraphs (2) to (4) of paragraph 8 of that Schedule to that Act (inclusion of person to whom paragraph applies in adults’ barred list with right to make representation afterwards) substitute—
- “(2) If the Secretary of State has reason to believe that—
- (a) this paragraph might apply to a person, and
- (b) the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,
- the Secretary of State must refer the matter to ISA.
- (3) Sub-paragraph (4) applies if (whether or not on a reference under sub-paragraph (2)) it appears to ISA that—
- (a) this paragraph applies to a person, and
- (b) the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults.
- (4) ISA must give the person the opportunity to make representations as to why the person should not be included in the adults’ barred list.
- (5) Sub-paragraph (6) applies if—
- (a) the person does not make representations before the end of any time prescribed for the purpose, or
- (b) the duty in sub-paragraph (4) does not apply by virtue of paragraph 16(2).
- (6) If ISA—
- (a) is satisfied that this paragraph applies to the person, and
- (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,
- it must include the person in the list.
- (7) Sub-paragraph (8) applies if the person makes representations before the end of any time prescribed for the purpose.
- (8) If ISA—
- (a) is satisfied that this paragraph applies to the person,

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- (b) has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults, and
- (c) is satisfied that it is appropriate to include the person in the adults' barred list,

it must include the person in the list.”

(7) In paragraph 9 of that Schedule to that Act (inclusion in adults' barred list on behaviour grounds)—

- (a) in sub-paragraph (1)(a) for the words from “has” to “conduct,” substitute “—
  - (i) has (at any time) engaged in relevant conduct, and
  - (ii) is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,”
- (b) in sub-paragraph (3), after paragraph (a) (and before the word “and” at the end of the paragraph), insert—
  - “(aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,” and
- (c) in sub-paragraph (3)(b) for “appears to ISA” substitute “is satisfied”.

(8) In paragraph 11 of that Schedule to that Act (inclusion in adults' barred list because of risk of harm)—

- (a) in sub-paragraph (1)(a) for “falls within sub-paragraph (4)” substitute “—
  - (i) falls within sub-paragraph (4), and
  - (ii) is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults”,
- (b) in sub-paragraph (3), after paragraph (a) (and before the word “and” at the end of the paragraph), insert—
  - “(aa) it has reason to believe that the person is or has been, or might in future be, engaged in regulated activity relating to vulnerable adults,” and
- (c) in sub-paragraph (3)(b) for “appears to ISA” substitute “is satisfied”.

*Abolition of other areas of regulation: England and Wales*

**68 Abolition of controlled activity**

Omit sections 21 to 23 of the Safeguarding Vulnerable Groups Act 2006 (controlled activity).

**69 Abolition of monitoring**

Omit sections 24 to 27 of the Safeguarding Vulnerable Groups Act 2006 (monitoring).

*Main amendments relating to new arrangements: England and Wales*

**70 Information for purposes of making barring decisions**

- (1) In paragraph 19 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (information required by ISA about persons to whom grounds for barring apply)—
- (a) in sub-paragraph (1)—
    - (i) in paragraph (a) after “applies” insert “or appears to apply”,
    - (ii) in paragraph (b) for “apply” substitute “applies or appears to apply”, and
    - (iii) omit paragraph (d),
  - (b) in sub-paragraphs (2) and (3) for “thinks might” substitute “reasonably believes to”, and
  - (c) in sub-paragraph (6)—
    - (i) omit the words from “which” to “it is”, and
    - (ii) omit “or paragraph 20(2)”.
- (2) In paragraph 20 of that Schedule to that Act (provision of information by Secretary of State to ISA) for sub-paragraph (2) substitute—
- “(2) Where the Secretary of State is under a duty under paragraph 1, 2, 7 or 8 to refer a matter to ISA, the Secretary of State must provide to ISA any prescribed details of relevant matter (within the meaning of section 113A of the Police Act 1997) of a prescribed description which has been made available to the Secretary of State for the purposes of Part 5 of that Act.”

**71 Review of barring decisions**

After paragraph 18 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (power to apply for review of a person’s inclusion in a barred list) insert—

- “18A (1) Sub-paragraph (2) applies if a person’s inclusion in a barred list is not subject to—
- (a) a review under paragraph 18, or
  - (b) an application under that paragraph,
- which has not yet been determined.
- (2) ISA may, at any time, review the person’s inclusion in the list.
- (3) On any such review, ISA may remove the person from the list if, and only if, it is satisfied that, in the light of—
- (a) information which it did not have at the time of the person’s inclusion in the list,
  - (b) any change of circumstances relating to the person concerned, or
  - (c) any error by ISA,
- it is not appropriate for the person to be included in the list.”

**72 Information about barring decisions**

- (1) For sections 30 to 32 of the Safeguarding Vulnerable Groups Act 2006 (provision of vetting information and information about cessation of monitoring) substitute—

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### **“30A Provision of barring information on request**

- (1) The Secretary of State must provide a person (A) with the information mentioned in subsection (3) in relation to another (B) if—
  - (a) A makes an application for the information and pays any fee payable in respect of the application,
  - (b) the application contains the appropriate declaration, and
  - (c) the Secretary of State has no reason to believe that the declaration is false.
- (2) The appropriate declaration is a declaration by A—
  - (a) that A falls within column 1 of the table in Schedule 7 in relation to B,
  - (b) that column 2 of the entry by virtue of which A falls within column 1 refers to children or (as the case may be) vulnerable adults, and
  - (c) that B has consented to the provision of the information to A.
- (3) The information is—
  - (a) if A’s declaration states that column 2 of the relevant entry refers to children, whether B is barred from regulated activity relating to children, and
  - (b) if A’s declaration states that column 2 of the relevant entry refers to vulnerable adults, whether B is barred from regulated activity relating to vulnerable adults.
- (4) If B consents to the provision of information to A in relation to an application under this section, the consent also has effect in relation to any subsequent such application by A.
- (5) The Secretary of State may prescribe any fee payable in respect of an application under this section.
- (6) Fees received by the Secretary of State by virtue of this section must be paid into the Consolidated Fund.
- (7) The Secretary of State may determine the form, manner and contents of an application for the purposes of this section (including the form and manner of a declaration contained in such an application).

### **30B Provision of barring information on registration**

- (1) The Secretary of State must establish and maintain a register for the purposes of this section.
- (2) The Secretary of State must register a person (A) in relation to another (B) if—
  - (a) A makes an application to be registered in relation to B and pays any fee payable in respect of the application,
  - (b) the application contains the appropriate declaration, and
  - (c) the Secretary of State has no reason to believe that the declaration is false.
- (3) The appropriate declaration is a declaration by A—
  - (a) that A falls within column 1 of the table in Schedule 7 in relation to B,

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- (b) that column 2 of the entry by virtue of which A falls within column 1 refers to children or (as the case may be) vulnerable adults, and
    - (c) that B has consented to the application.
  - (4) A's application and registration relate—
    - (a) if A's declaration states that column 2 of the relevant entry refers to children, to regulated activity relating to children;
    - (b) if A's declaration states that column 2 of the relevant entry refers to vulnerable adults, to regulated activity relating to vulnerable adults.
  - (5) The Secretary of State must notify A if B is barred from regulated activity to which A's registration relates.
  - (6) The requirement under subsection (5) is satisfied if notification is sent to any address recorded against A's name in the register.
  - (7) If B consents to the provision of information to A under section 30A, the consent also has effect as consent to any application by A to be registered in relation to B under this section.
  - (8) The Secretary of State may prescribe any fee payable in respect of an application under this section.
  - (9) Fees received by the Secretary of State by virtue of this section must be paid into the Consolidated Fund.
  - (10) The Secretary of State may determine the form, manner and contents of an application for the purposes of this section (including the form and manner of a declaration contained in such an application)."
- (2) In section 33 of that Act (cessation of registration)—
  - (a) in subsection (1) for "32" substitute "30B",
  - (b) in subsection (2) for "(6)" substitute "(5)", and
  - (c) after subsection (3) insert—
    - "(3A) Circumstances prescribed by virtue of subsection (3) may, in particular, include that—
      - (a) the Secretary of State has asked the registered person (A) to make a renewed declaration within the prescribed period in relation to the person (B) in relation to whom A is registered, and
      - (b) either—
        - (i) A has failed to make the declaration within that period, or
        - (ii) A has made the declaration within that period but the Secretary of State has reason to believe that it is false.
    - (3B) A renewed declaration is a declaration by A—
      - (a) that A falls within column 1 of the table in Schedule 7 in relation to B,
      - (b) that column 2 of the entry by virtue of which A falls within column 1 refers to children or (as the case may be) vulnerable adults, and
      - (c) that B consents to the registration of A in relation to B.

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*Status: This is the original version (as it was originally enacted).*

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- (3C) If B consents to the provision of information to A under section 30A, the consent also has effect as consent to the registration of A in relation to B.
- (3D) Section 34 applies in relation to the making of a declaration in response to a request from the Secretary of State of the kind mentioned in subsection (3A)(a) as it applies in relation to the making of a declaration in an application made for the purposes of section 30B.”
- (3) In section 34 of that Act (declarations under sections 30 and 32)—
- (a) in the heading for “30 and 32” substitute “30A and 30B”, and
  - (b) in subsection (1) for “30 or 32” substitute “30A or 30B”.
- (4) Omit entry 19 in the table in paragraph 1 of Schedule 7 to that Act (power to add entries to the table).
- (5) In paragraph 2 of Schedule 7 to that Act (power to amend entries in the table) for the words from “any” to the end substitute “this Schedule”.
- (6) Omit paragraph 3(1)(b) of Schedule 7 to that Act (barring information where certain activities carried on for the purposes of the armed forces of the Crown) and the word “or” before it.

### **73 Duty to check whether person barred**

After section 34 of the Safeguarding Vulnerable Groups Act 2006 (declarations relating to the provision of barring information) insert—

#### **“34ZA Duty to check whether person barred**

- (1) A regulated activity provider who is considering whether to permit an individual (B) to engage in regulated activity relating to children or vulnerable adults must ascertain that B is not barred from the activity concerned before permitting B to engage in it.
- (2) A personnel supplier who—
  - (a) is considering whether to supply an individual (B) to another (P), and
  - (b) knows, or has reason to believe, that P will make arrangements for B (if supplied) to engage in regulated activity relating to children or vulnerable adults,
 must ascertain that B is not barred from the activity concerned before supplying B to P.
- (3) A person is, in particular, to be treated as having met the duty in subsection (1) or (2) if condition 1, 2 or 3 is met.
- (4) Condition 1 is that the person has, within the prescribed period, been informed under section 30A that B is not barred from the activity concerned.
- (5) Condition 2 is that—
  - (a) the person has, within the prescribed period, checked a relevant enhanced criminal record certificate of B which has been obtained within that period, and

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- (b) the certificate does not show that B is barred from the activity concerned.
- (6) Condition 3 is that—
  - (a) the person has, within the prescribed period, checked—
    - (i) a relevant enhanced criminal record certificate of B, and
    - (ii) up-date information given, within that period, under section 116A of the Police Act 1997 in relation to the certificate,
  - (b) the certificate does not show that B is barred from the activity concerned, and
  - (c) the up-date information is not advice to request B to apply for a new enhanced criminal record certificate.
- (7) The Secretary of State may by regulations provide for—
  - (a) the duty under subsection (1) not to apply in relation to persons of a prescribed description,
  - (b) the duty under subsection (2) not to apply in relation to persons of a prescribed description.
- (8) In this section—
  - “enhanced criminal record certificate” means an enhanced criminal record certificate issued under section 113B of the Police Act 1997,
  - “relevant enhanced criminal record certificate” means—
    - (a) in the case of regulated activity relating to children, an enhanced criminal record certificate which includes, by virtue of section 113BA of the Police Act 1997, suitability information relating to children, and
    - (b) in the case of regulated activity relating to vulnerable adults, an enhanced criminal record certificate which includes, by virtue of section 113BB of that Act, suitability information relating to vulnerable adults.”

#### **74 Restrictions on duplication with Scottish and Northern Ireland barred lists**

- (1) Before paragraph 6 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (restriction on inclusion in children’s barred list for Scottish cases), and after the italic cross-heading before that paragraph, insert—
  - “5A (1) ISA must not include a person in the children’s barred list if ISA knows that the person is included in a corresponding list.
  - (2) ISA must remove a person from the children’s barred list if ISA knows that the person is included in a corresponding list.
  - (3) A corresponding list is a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the children’s barred list.”
- (2) In paragraph 6(1)(a) of that Schedule to that Act—
  - (a) after “if” insert “ISA knows that”,
  - (b) after “authority” insert “—

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- (i)”,  
and
- (c) for the words from “(whether” to “list)” substitute “, and  
(ii) has decided not to include the person in the list”.
- (3) Before paragraph 12 of that Schedule to that Act (restriction on inclusion in adults’ barred list for Scottish cases), and after the italic cross-heading before that paragraph, insert—
  - “11A (1) ISA must not include a person in the adults’ barred list if ISA knows that the person is included in a corresponding list.
  - (2) ISA must remove a person from the adults’ barred list if ISA knows that the person is included in a corresponding list.
  - (3) A corresponding list is a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the adults’ barred list.”
- (4) In paragraph 12(1)(a) of that Schedule to that Act—
  - (a) after “if” insert “ISA knows that”,
  - (b) after “authority” insert “—  
(i)”,  
and
  - (c) for the words from “(whether” to “list)” substitute “, and  
(ii) has decided not to include the person in the list”.

*Other amendments relating to new arrangements: England and Wales*

## 75 Professional bodies

- (1) In section 41 of the Safeguarding Vulnerable Groups Act 2006 (registers: duty to refer) —
  - (a) in subsection (1)—
    - (i) for “must” substitute “may”, and
    - (ii) omit “prescribed”,
  - (b) in subsection (4)—
    - (i) in paragraph (a), for “engaged or may engage” substitute “or has been, or might in future be, engaged”,
    - (ii) also in paragraph (a), omit “or controlled activity”, and
    - (iii) in paragraph (b) for “, 2, 7 or 8” substitute “or 7”,
  - (c) in subsection (5) omit “prescribed”, and
  - (d) in the heading for “duty” substitute “power”.
- (2) Omit paragraph 9(2)(a) of Schedule 5 to the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 ([S.I. 2009/1182](#)) (which, if section 44(1) of the Act of 2006 were to come into force, would insert subsections (4A) to (4C) into section 41 of the Act of 2006).
- (3) In section 43 of the Act of 2006 (registers: notice of barring etc.) for subsections (1) to (5) substitute—



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- “(1) Subsection (2) applies if—
- (a) ISA knows or thinks that a person (A) appears on a relevant register, and
  - (b) either—
    - (i) A is included in a barred list, or
    - (ii) ISA is aware that A is subject to a relevant disqualification.
- (2) ISA must—
- (a) notify the keeper of the register of the circumstances mentioned in subsection (1)(b)(i) or (as the case may be) (ii), and
  - (b) in the case where A is included in a barred list, provide the keeper of the register with such of the information on which ISA relied in including A in the list as ISA considers—
    - (i) to be relevant to the exercise of any function of the keeper, and
    - (ii) otherwise appropriate to provide.
- (3) Subsection (4) applies if the keeper of a relevant register applies to ISA to ascertain in relation to a person (A) whether—
- (a) A is included in a barred list, or
  - (b) ISA is aware that A is subject to a relevant disqualification.
- (4) ISA must notify the keeper of the register as to whether the circumstances are as mentioned in subsection (3)(a) or (as the case may be) (b).
- (5) ISA may (whether on an application by the keeper or otherwise) provide to the keeper of a relevant register such relevant information as ISA considers appropriate.
- (5A) Subsection (5B) applies if—
- (a) a keeper of a register has applied to the Secretary of State to be notified in relation to a person (A) if—
    - (i) A is included in a barred list, or
    - (ii) the Secretary of State is aware that A is subject to a relevant disqualification, and
  - (b) the application has not been withdrawn.
- (5B) The Secretary of State must notify the keeper of the register if the circumstances are, or become, as mentioned in subsection (5A)(a)(i) or (as the case may be) (ii).
- (5C) For the purposes of subsection (5A)(b) an application is withdrawn if—
- (a) the keeper of the register notifies the Secretary of State that the keeper no longer wishes to be notified if the circumstances are, or become, as mentioned in subsection (5A)(a)(i) or (as the case may be) (ii) in relation to A, or
  - (b) the Secretary of State cancels the application on either of the following grounds—
    - (i) that the keeper has not answered, within such reasonable period as was required by the Secretary of State, a request from the Secretary of State as to whether the keeper still wishes to be notified if the circumstances are, or become, as

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- mentioned in subsection (5A)(a)(i) or (as the case may be) (ii), or
  - (ii) that A neither appears in the register nor is being considered for inclusion in the register.
- (5D) A keeper of a relevant register may apply for information under this section, or to be notified under this section, in relation to a person (A) only if—
- (a) A appears in the register, or
  - (b) A is being considered for inclusion in the register.
- (5E) The duties in subsections (2), (4) and (5B) do not apply if ISA or (as the case may be) the Secretary of State is satisfied that the keeper of the register already has the information concerned.
- (5F) The Secretary of State may determine the form, manner and contents of an application for the purposes of this section.
- (5G) In this section relevant information is information—
- (a) which—
    - (i) relates to the protection of children or vulnerable adults in general, or of any child or vulnerable adult in particular, and
    - (ii) is relevant to the exercise of any function of the keeper of the register, but
  - (b) which is not—
    - (i) information that the circumstances are as mentioned in subsection (1)(b)(i) or (ii) in relation to a person,
    - (ii) any information provided under subsection (2)(b), or
    - (iii) information falling within paragraph 19(5) of Schedule 3.
- (5H) The Secretary of State may by order amend subsection (5G).”
- (4) In section 43(6)(a) of the Act of 2006 (meaning of “relevant register”) omit “of entry 1 or 8”.
- (5) In the heading of section 43 of that Act for “notice of barring and cessation of monitoring” substitute “provision of barring information to keepers of registers”.
- (6) Omit section 44 of that Act (registers: power to apply for vetting information).

## 76 Supervisory authorities

- (1) In section 45 of the Safeguarding Vulnerable Groups Act 2006 (duty of supervisory authorities to refer)—
- (a) in subsection (1)—
    - (i) for “must” substitute “may”, and
    - (ii) omit “prescribed”,
  - (b) in subsection (4)—
    - (i) in paragraph (a), for “engaged or may engage” substitute “or has been, or might in future be, engaged”,
    - (ii) also in paragraph (a), omit “or controlled activity”, and
    - (iii) in paragraph (b) for “, 2, 7 or 8” substitute “or 7”,
  - (c) in subsection (5) omit “prescribed”,

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- (d) omit subsection (6), and
  - (e) in the heading for “duty” substitute “power”.
- (2) In section 47 of that Act (supervisory authorities: power to apply for vetting information)—
- (a) in the heading for “vetting” substitute “certain barring”,
  - (b) in subsection (1) for “the Secretary of State”, in both places where it occurs, substitute “ISA”,
  - (c) in subsection (2) omit paragraphs (b) to (e),
  - (d) in subsection (3) omit paragraphs (b) to (e),
  - (e) omit subsection (5), and
  - (f) in subsection (7) for “prescribe” substitute “determine”.
- (3) In section 48 of that Act (supervisory authorities: notification of barring etc. in respect of children)—
- (a) in subsection (1)—
    - (i) for “This section” substitute “Subsection (2)”,
    - (ii) in paragraph (a) omit “newly”,
    - (iii) at the end of paragraph (a) insert “or”,
    - (iv) in paragraph (b) for “becomes” substitute “is”, and
    - (v) omit paragraph (c) and the word “or” before it,
  - (b) in subsection (2) for “, (b) or (c)” substitute “or (b)”,
  - (c) after subsection (2) insert—

“(2A) The duty in subsection (2) does not apply in relation to an interested supervisory authority if the Secretary of State is satisfied that the authority already has the information concerned.”,
  - (d) in subsection (3)(a) for the words from “if” to “occurs” substitute “of any circumstance mentioned in subsection (1)”,
  - (e) in subsection (5)—
    - (i) after “withdrawn if” insert “—  
(a)”,
    - (ii) for the words from “if”, where it appears for the second time, to “occurs” substitute “of any circumstance mentioned in subsection (1)”, and
    - (iii) at the end insert “, or
- (b) the Secretary of State cancels the application on either of the following grounds—
- (i) that the supervisory authority has not answered, within such reasonable period as was required by the Secretary of State, a request from the Secretary of State as to whether the supervisory authority still wishes to be notified of any circumstance mentioned in subsection (1) in relation to the person, or
  - (ii) that the notification is not required in connection with the exercise of a function of the supervisory authority mentioned in section 45(7).”, and

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- (f) in subsection (8) for “prescribe” substitute “determine”.
- (4) In section 49 of that Act (supervisory authorities: notification of barring etc. in respect of vulnerable adults)—
- (a) in subsection (1)—
- (i) for “This section” substitute “Subsection (2)”,
  - (ii) in paragraph (a) omit “newly”,
  - (iii) at the end of paragraph (a) insert “or”,
  - (iv) in paragraph (b) for “becomes” substitute “is”, and
  - (v) omit paragraph (c) and the word “or” before it,
- (b) in subsection (2) for “, (b) or (c)” substitute “or (b)”,
- (c) after subsection (2) insert—
- “(2A) The duty in subsection (2) does not apply in relation to an interested supervisory authority if the Secretary of State is satisfied that the authority already has the information concerned.”,
- (d) in subsection (3)(a) for the words from “if” to “occurs” substitute “of any circumstance mentioned in subsection (1)”,
- (e) in subsection (5)—
- (i) after “withdrawn if” insert “—  
(a)”,
  - (ii) for the words from “if”, where it appears for the second time, to “occurs” substitute “of any circumstance mentioned in subsection (1)”, and
  - (iii) at the end insert “, or  
(b) the Secretary of State cancels the application on either of the following grounds—  
(i) that the supervisory authority has not answered, within such reasonable period as was required by the Secretary of State, a request from the Secretary of State as to whether the supervisory authority still wishes to be notified of any circumstance mentioned in subsection (1) in relation to the person, or  
(ii) that the notification is not required in connection with the exercise of a function of the supervisory authority mentioned in section 45(7).”, and
- (f) in subsection (8) for “prescribe” substitute “determine”.
- (5) In section 50 of that Act (provision of information to supervisory authorities)—
- (a) in subsection (2) for “must” substitute “may (whether on an application by the authority or otherwise)”,
- (b) in subsection (3)—
- (i) in paragraph (b), after “the authority” insert “which is mentioned in section 45(7)”, and
  - (ii) for the words from “or information” to “occurred” substitute “or of any circumstance mentioned in section 48(1) or 49(1)”, and
- (c) after subsection (3) insert—

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- “(4) A supervisory authority may apply to ISA under this section only if the information is required in connection with the exercise of a function of the supervisory authority which is mentioned in section 45(7).
- (5) The Secretary of State may determine the form, manner and contents of an application for the purposes of this section.”

## 77 Minor amendments

- (1) In the Policing and Crime Act 2009 omit—
  - (a) section 87(2) (which, if commenced, would insert sections 34A to 34C into the Safeguarding Vulnerable Groups Act 2006 in connection with the notification of proposals to include persons in barred lists), and
  - (b) section 89(6) (which, if commenced, would amend the power of the Secretary of State in the Act of 2006 to examine records of convictions or cautions in connection with barring decisions).
- (2) In section 39 of the Safeguarding Vulnerable Groups Act 2006 (duty of local authorities to refer)—
  - (a) in subsection (1)—
    - (i) for “must” substitute “may”, and
    - (ii) omit “prescribed”,
  - (b) in subsection (4)—
    - (i) in paragraph (a), for “engaged or may engage” substitute “or has been, or might in future be, engaged”,
    - (ii) also in paragraph (a), omit “or controlled activity”, and
    - (iii) in paragraph (b) for “, 2, 7 or 8” substitute “or 7”,
  - (c) in subsection (5) omit “prescribed”, and
  - (d) in the heading for “duty” substitute “power”.
- (3) In section 50A(1) of that Act (power for ISA to provide information to the police for use for certain purposes), after paragraph (b), insert—
  - “(c) the appointment of persons who are under the direction and control of the chief officer,
  - (d) any prescribed purpose”.
- (4) After section 50A(1) of that Act insert—
  - “(1A) ISA must, for use for any of the purposes mentioned in subsection (1), provide to any chief officer of police who has requested it a barred list or information as to whether a particular person is barred.
  - (1B) ISA may, for use for the purposes of the protection of children or vulnerable adults, provide to a relevant authority any information which ISA reasonably believes to be relevant to that authority.
  - (1C) ISA must, for use for the purposes of the protection of children or vulnerable adults, provide to any relevant authority who has requested it information as to whether a particular person is barred.”
- (5) After section 50A(3) of that Act insert—

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“(4) In this section “relevant authority” means—

- (a) the Secretary of State exercising functions in relation to prisons, or
- (b) a provider of probation services (within the meaning given by section 3(6) of the Offender Management Act 2007).”

(6) After paragraph 5 of Schedule 4 to that Act (regulated activity relating to children) insert—

*“Guidance*

- 5A (1) The Secretary of State must give guidance for the purpose of assisting regulated activity providers and personnel suppliers in deciding whether supervision is of such a kind that, as a result of paragraph 1(2B)(b), 2(3A) or 2(3B)(b), the person being supervised would not be engaging in regulated activity relating to children.
- (2) Before giving guidance under this paragraph, the Secretary of State must consult the Welsh Ministers.
- (3) The Secretary of State must publish guidance given under this paragraph.
- (4) A regulated activity provider or a personnel supplier must, in exercising any functions under this Act, have regard to guidance for the time being given under this paragraph.”

*Corresponding amendments relating to Northern Ireland*

## **78 Corresponding amendments in relation to Northern Ireland**

Schedule 7 (which makes corresponding amendments in relation to Northern Ireland about the safeguarding of vulnerable groups) has effect.