

## SCHEDULES

### SCHEDULE 7

Section 78

#### SAFEGUARDING OF VULNERABLE GROUPS: NORTHERN IRELAND

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

- 1 (1) Parts 1 and 3 of Schedule 2 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (S.I. 2007/1351 (N.I. 11)) (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—
        - (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—

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- (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.

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(2C) The reference in sub-paragraph (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) after sub-paragraph (6) insert—

“(6A) The exercise of a function of a controller appointed in respect of a child under Article 101 of the Mental Health (Northern Ireland) Order 1986 (NI 4) is a regulated activity relating to children.”,

(b) omit sub-paragraph (7) (exercise of functions of persons mentioned in paragraph 4(1) to be regulated activity), and

(c) after sub-paragraph (12) insert—

“(13) 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 sub-paragraphs (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.”

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- (8) Omit paragraph 4 (list of persons referred to in paragraph 1(7)).
- (9) In paragraph 10(2) (the period condition) for “, (c) or (d)” substitute “or (c)”.

*Restriction of definition of vulnerable adults*

- 2 (1) In Article 2 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (interpretation of Order), in the first paragraph (2)—
  - (a) after the definition of “the 2003 Order” 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 Article 3” 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 2 is provided”.
- (2) Omit Article 3 of the Order of 2007 (definition of vulnerable adults).

*Restriction of scope of regulated activities: vulnerable adults*

- 3 (1) Parts 2 and 3 of Schedule 2 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (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.

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- (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—
- (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 2(4) of the Health and Personal Social Services Act (Northern Ireland) 2001 and social care worker means a person who is a social care worker by virtue of section 2(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) an enduring power of attorney (within the meaning of the Enduring Powers of Attorney (Northern Ireland) Order 1987 (NI 16)) in respect of the person which is—
    - (i) registered in accordance with that Order, or
    - (ii) the subject of an application to be so registered,

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- (b) an order made under Article 99 or 101 of the Mental Health (Northern Ireland) Order 1986 (NI 4) by the High Court in relation to the person or the person’s property or affairs, or
- (c) the appointment of a representative to receive payments on behalf of the person in pursuance of regulations made under the Social Security Administration (Northern Ireland) Act 1992.”
- (3) Omit paragraph 7(4) (certain activities in residential care or nursing homes to be regulated activity).
- (4) In paragraph 7(5) (day to day management or supervision of certain activities to be regulated activity) omit “, (4)”.
- (5) Omit paragraph 7(9) (functions of certain persons to be regulated activity).
- (6) Omit paragraph 8 (the persons referred to in paragraph 7(9) whose functions are to be regulated activity).
- (7) 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)”.

*Alteration of test for barring decisions*

- 4 (1) For sub-paragraphs (2) and (3) of paragraph 1 of Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (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 Order (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—
    - (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—

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- (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 Order (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 Order (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 Order (automatic inclusion of person to whom paragraph applies in adults’ barred list) substitute—

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- “(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 Order (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,
  - (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 Order (inclusion in adults’ barred list on behaviour grounds)—



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- (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 Order (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 controlled activity*

- 5 Omit Articles 25 to 27 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (controlled activity).

#### *Abolition of monitoring*

- 6 Omit Articles 28 to 31 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (monitoring).

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

- 7 (1) In paragraph 19 of Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (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)”.

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(2) In paragraph 20 of that Schedule to that Order (provision of information by Secretary of State to ISA) for sub-paragraph (3) substitute—

“(3) 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.”

*Review of barring decisions*

8 After paragraph 18 of Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (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.”

*Information about barring decisions*

9 (1) For Articles 32 to 34 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (provision of vetting information and information about cessation of monitoring) substitute—

**“32A Provision of barring information on request**

(1) The Secretary of State must provide a person (A) with the information mentioned in paragraph (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 5 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

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- (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 Article, 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 Article.
- (6) Fees received by the Secretary of State by virtue of this Article must be paid into the Consolidated Fund of the United Kingdom.
- (7) The Secretary of State may determine the form, manner and contents of an application for the purposes of this Article (including the form and manner of a declaration contained in such an application).

### **32B Provision of barring information on registration**

- (1) The Secretary of State must establish and maintain a register for the purposes of this Article.
- (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 5 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 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.

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- (6) The requirement under paragraph (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 Article 32A, the consent also has effect as consent to any application by A to be registered in relation to B under this Article.
  - (8) The Secretary of State may prescribe any fee payable in respect of an application under this Article.
  - (9) Fees received by the Secretary of State by virtue of this Article must be paid into the Consolidated Fund of the United Kingdom.
  - (10) The Secretary of State may determine the form, manner and contents of an application for the purposes of this Article (including the form and manner of a declaration contained in such an application)."
- (2) In Article 35 of that Order (cessation of registration)—
- (a) in paragraph (1) for "34" substitute "32B",
  - (b) in paragraph (2) for "(6)" substitute "(5)", and
  - (c) after paragraph (3) insert—
    - "(3A) Circumstances prescribed by virtue of paragraph (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 5 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.
    - (3C) If B consents to the provision of information to A under Article 32A, the consent also has effect as consent to the registration of A in relation to B.
    - (3D) Article 36 applies in relation to the making of a declaration in response to a request from the Secretary of State of the kind mentioned in paragraph (3A)(a) as it applies in relation to the making of a declaration in an application made for the purposes of Article 32B."
- (3) In Article 36 of that Order (declarations under Articles 32 and 34)—

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- (a) in the heading for “32 and 34” substitute “32A and 32B”, and
  - (b) in paragraph (1) for “32 or 34” substitute “32A or 32B”.
- (4) Omit entry 19 in the table in paragraph 1 of Schedule 5 to that Order (power to add entries to the table).
- (5) In paragraph 2 of Schedule 5 to that Order (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 5 to that Order (barring information where certain activities carried on for the purposes of the armed forces of the Crown) and the word “or” before it.

*Duty to check whether person barred*

- 10 After Article 36 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (declarations relating to the provision of barring information) insert—

**“36ZA 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 paragraph (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 Article 32A 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
  - (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,

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- (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 paragraph (1) not to apply in relation to persons of a prescribed description,
  - (b) the duty under paragraph (2) not to apply in relation to persons of a prescribed description.
- (8) In this Article—
- “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.”

*Restrictions on duplication with barred lists in England and Wales and Scotland*

- 11 (1) Before paragraph 6 of Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (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 England and Wales or Scotland 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 Order—
- (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”.
- (3) Before paragraph 12 of that Schedule to that Order (restriction on inclusion in adults’ barred list for Scottish cases), and after the italic cross-heading before that paragraph, insert—

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- “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 England and Wales or Scotland 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 Order—
- (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”.

#### *Professional bodies*

- 12 (1) In Article 43 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (registers: duty to refer)—
- (a) in paragraph (1)—
    - (i) for “must” substitute “may”, and
    - (ii) omit “prescribed”,
  - (b) in paragraph (4)—
    - (i) in sub-paragraph (a), for “engaged or may engage” substitute “or has been, or might in future be, engaged”,
    - (ii) also in sub-paragraph (a), omit “or controlled activity”, and
    - (iii) in sub-paragraph (b) for “, 2, 7 or 8” substitute “or 7”,
  - (c) omit paragraphs (4A) to (4C),
  - (d) in paragraph (5) omit “prescribed”, and
  - (e) in the heading for “duty” substitute “power”.
- (2) In Article 45 of that Order (registers: notice of barring etc.) for paragraphs (1) to (5) substitute—
- “(1) Paragraph (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 paragraph (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—

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- (i) to be relevant to the exercise of any function of the keeper, and
  - (ii) otherwise appropriate to provide.
- (3) Paragraph (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 paragraph (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) Paragraph (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 paragraph (5A)(a)(i) or (as the case may be) (ii).
- (5C) For the purposes of paragraph (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 paragraph (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 mentioned in paragraph (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 Article, or to be notified under this Article, 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 paragraphs (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.



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(5F) The Secretary of State may determine the form, manner and contents of an application for the purposes of this Article.

(5G) In this Article 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 paragraph (1)(b)(i) or (ii) in relation to a person,
- (ii) any information provided under paragraph (2)(b), or
- (iii) information falling within paragraph 19(5) of Schedule 1.

(5H) The Secretary of State may by order amend paragraph (5G).”

(3) In the heading of Article 45 of that Order for “notice of barring and cessation of monitoring” substitute “provision of barring information to keepers of registers”.

(4) Omit Article 46 of that Order (registers: power to apply for vetting information).

### *Supervisory authorities*

13 (1) In Article 47 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (duty of supervisory authorities to refer)—

(a) in paragraph (1)—

- (i) for “must” substitute “may”, and
- (ii) omit “prescribed”,

(b) in paragraph (4)—

- (i) in sub-paragraph (a), for “engaged or may engage” substitute “or has been, or might in future be, engaged”,
- (ii) also in sub-paragraph (a), omit “or controlled activity”, and
- (iii) in sub-paragraph (b) for “, 2, 7 or 8” substitute “or 7”,

(c) in paragraph (5) omit “prescribed”,

(d) omit paragraph (6), and

(e) in the heading for “duty” substitute “power”.

(2) In Article 49 of that Order (supervisory authorities: power to apply for vetting information)—

(a) in the heading for “vetting” substitute “certain barring”,

(b) in paragraph (1) for “the Secretary of State”, in both places where it occurs, substitute “ISA”,

(c) in paragraph (2) omit sub-paragraphs (b) to (e),

(d) in paragraph (3) omit sub-paragraphs (b) to (e),

(e) omit paragraph (5), and

(f) in paragraph (7) for “prescribe” substitute “determine”.

(3) In Article 50 of that Order (supervisory authorities: notification of barring etc. in respect of children)—

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- (a) in paragraph (1)—
    - (i) for “This Article” substitute “Paragraph (2)”,
    - (ii) in sub-paragraph (a) omit “newly”,
    - (iii) at the end of sub-paragraph (a) insert “or”,
    - (iv) in sub-paragraph (b) for “becomes” substitute “is”, and
    - (v) omit sub-paragraph (c) and the word “or” before it,
  - (b) in paragraph (2) for “, (b) or (c)” substitute “or (b)”,
  - (c) after paragraph (2) insert—
    - “(2A) The duty in paragraph (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 paragraph (3)(a) for the words from “if” to “occurs” substitute “of any circumstance mentioned in paragraph (1)”,
  - (e) in paragraph (5)—
    - (i) after “withdrawn if” insert “—  
(a)”,  
and
    - (ii) for the words from “if”, where it appears for the second time, to “occurs” substitute “of any circumstance mentioned in paragraph (1)”,
  - (f) also in paragraph (5), 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 paragraph (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 Article 47(7).”, and
  - (g) in paragraph (8) for “prescribe” substitute “determine”.
- (4) In Article 51 of that Order (supervisory authorities: notification of barring etc. in respect of vulnerable adults)—
- (a) in paragraph (1)—
    - (i) for “This Article” substitute “Paragraph (2)”,
    - (ii) in sub-paragraph (a) omit “newly”,
    - (iii) at the end of sub-paragraph (a) insert “or”,
    - (iv) in sub-paragraph (b) for “becomes” substitute “is”, and
    - (v) omit sub-paragraph (c) and the word “or” before it,
  - (b) in paragraph (2) for “, (b) or (c)” substitute “or (b)”,
  - (c) after paragraph (2) insert—

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- “(2A) The duty in paragraph (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 paragraph (3)(a) for the words from “if” to “occurs” substitute “of any circumstance mentioned in paragraph (1)”,
- (e) in paragraph (5)—
- (i) after “withdrawn if” insert “—
- (a)”,
- and
- (ii) for the words from “if”, where it appears for the second time, to “occurs” substitute “of any circumstance mentioned in paragraph (1)”,
- (f) also in paragraph (5), 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 paragraph (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 Article 47(7).”, and
- (g) in paragraph (8) for “prescribe” substitute “determine”.
- (5) In Article 52 of that Order (provision of information to supervisory authorities)—
- (a) in paragraph (2) for “must” substitute “may (whether on an application by the authority or otherwise)”,
- (b) in paragraph (3)—
- (i) in sub-paragraph (b), after “the authority” insert “which is mentioned in Article 47(7)”, and
- (ii) for the words from “or information” to “occurred” substitute “or of any circumstance mentioned in Article 50(1) or 51(1)”, and
- (c) after paragraph (3) insert—
- “(4) A supervisory authority may apply to ISA under this Article only if the information is required in connection with the exercise of a function of the supervisory authority which is mentioned in Article 47(7).
- (5) The Secretary of State may determine the form, manner and contents of an application for the purposes of this Article.”

#### *Minor amendments*

- 14 (1) Omit section 90(2) of the Policing and Crime Act 2009 (which, if commenced, would insert Articles 36A to 36C into the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 in connection with the notification of proposals to include persons in barred lists).

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- (2) After Article 10(8) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (regulated activity providers) insert—
- “(8A) An authority that is an authority for the purposes of section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002 (c.6) or Article 18C of the Children Order (direct payments) does not make arrangements for another to engage in a regulated activity by virtue of anything the authority does under that section or Article.”
- (3) In Article 41 of the Order of 2007 (education and library boards and HSC bodies: duty to refer)—
- (a) in paragraph (1)—
- (i) for “must” substitute “may”, and
- (ii) omit “prescribed”,
- (b) in paragraph (4)—
- (i) in sub-paragraph (a), for “engaged or may engage” substitute “or has been, or might in future be, engaged”,
- (ii) also in sub-paragraph (a), omit “or controlled activity”, and
- (iii) in sub-paragraph (b) for “, 2, 7 or 8” substitute “or 7”,
- (c) in paragraph (5) omit “prescribed”, and
- (d) in the heading for “duty” substitute “power”.
- (4) In Article 52A(1) of that Order (power for ISA to provide information to the police for use for certain purposes)—
- (a) for the words “or the chief constable of a police force in England, Wales or Scotland” substitute “, a chief officer of police or the chief constable of a police force in Scotland”, and
- (b) after sub-paragraph (b), insert—
- “(c) the appointment of persons who are under the direction and control of the chief constable or (as the case may be) chief officer;
- (d) any prescribed purpose”.
- (5) After Article 52A(1) of that Order insert—
- “(1A) ISA must, for use for any of the purposes mentioned in paragraph (1), provide to any chief constable or chief officer mentioned in that paragraph 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.
- (1D) In this Article “relevant authority” means—
- (a) the Department of Justice, exercising functions in relation to prisons and youth justice,
- (b) the Probation Board for Northern Ireland, or

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(c) an HSC body.”

(6) After paragraph 5 of Schedule 2 to that Order (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) The Secretary of State must publish guidance given under this paragraph.
- (3) A regulated activity provider or a personnel supplier must, in exercising any functions under this Order, have regard to guidance for the time being given under this paragraph.”