

SAFEGUARDING VULNERABLE GROUPS (NORTHERN IRELAND) ORDER 2007

S.I. 2007 1351

EXPLANATORY MEMORANDUM

COMMENTARY ON ARTICLES

15. Comments are not given where the wording is self-explanatory.

Article 5: The Independent Barring Board

Article 5 refers to IBB established under section 1 of the Safeguarding Vulnerable Groups Act 2006. The IBB will be a new statutory body and will meet the Ministerial commitment to transfer the responsibility for barring decisions from Departments to a new independent board of experts.

Article 6: Barred Lists

Article 6 provides that the IBB must establish and maintain two new barred lists – a children’s barred list and an adults’ barred list. Schedule 1 makes provision regarding inclusion on the barred lists.

Schedule 1: Barred Lists

Part I sets out how someone may be included in the children’s barred list.

Part II sets out how someone may be included in the vulnerable adults’ barred list.

Article 7: Barred Persons

Article 7 provides that an individual is barred from “regulated activity” if they are included on either of the lists set up by Article 6; or on an equivalent list held in England and Wales or Scotland.

Article 8: Appeals

Article 8 provides for an appeal to the Care Tribunal on a point of law or on a finding of fact made by the IBB against a decision of the IBB to include or keep someone in the children’s or adults’ barred list.

Article 9: Regulated Activity

Article 9 provides that regulated activity relating to children and vulnerable adults is as set out in Schedule 2 of the Order. Regulated activity broadly speaking includes work (paid or unpaid) which involves certain close contact with children or vulnerable adults.

Schedule 2: Regulated Activity

Part I defines regulated activity in relation to children for which individuals need to be monitored and where employers must make a check of their status.

Part II defines regulated activity in relation to vulnerable adults for which individuals need to be monitored and where employers must make a check of their status

Article 10: Regulated Activity Providers

Article 10 defines a “regulated activity provider” for the purpose of the Order, on whom a number of obligations are imposed by its other provisions. A regulated activity provider is an individual or organisation responsible for the management or control of regulated activity, who makes arrangements for a person to engage in that activity. The effect of paragraph (2) (b) is that regulated activity providers will be those with the ultimate responsibility for the regulated activity: not every individual in the management chain will be responsible for making the check of a person’s status. There is no need for a contract to be in place for an individual or body to be a regulated activity provider, and the definition applies to both paid and unpaid work.

Article 11: Barred person not to engage in regulated activity

Article 11 makes it an offence for a barred person to seek to, offer to or engage in regulated activity, even where, as paragraph (5) sets out, that activity takes place occasionally or for a short period of time. Paragraph (3) provides for a defence if the person can prove that he did not know, and could not reasonably be expected to know, that he was barred.

Article 12: Person not to engage in regulated activity unless subject to monitoring

Article 12 makes it an offence for a person to engage in regulated activity with the permission of the regulated activity provider unless he is subject to monitoring. A person may apply to become subject to monitoring under article 28.

Article 13: Use of barred person for regulated activity

Article 13 makes it an offence for any person or personnel supplier to permit an individual to engage in regulated activity if he knows or has reason to believe that the individual is barred from that activity. Even where the activity is taking place occasionally or for a short period of time the employer would commit the offence if they took on a barred person.

Article 14: Use of person not subject to monitoring for regulated activity

Article 14 makes it an offence for a regulated activity provider to permit an individual to engage in a regulated activity if he knows or has reason to believe that he is not subject to monitoring in relation to that activity. A similar offence is created in relation to a personnel supplier who supplies an individual in these circumstances.

Article 15: Regulated provider: failure to check

Article 15 makes it an offence for a regulated activity provider to permit an individual to engage in regulated activity without ascertaining that they are subject to monitoring in relation to the activity. The regulated activity provider must ascertain whether the individual is subject to monitoring in accordance with the prescribed part of Schedule 3. Paragraph (5) ensures this offence does not apply if the individual is under 16 years old.

Schedule 3: Appropriate verification

Schedule 3 sets out how a regulated activity provider fulfils their duty to ascertain that a person is subject to monitoring.

Article 16: Personnel suppliers: failure to check

Article 16 refers to Schedule 4.

Paragraph (2) enables the Secretary of State to extend, by order, the requirement on employment businesses to check an individual’s barred status to other types of personnel suppliers.

Schedule 4: Employment Businesses: failure to check

Schedule 4 ensures that an employment business will commit an offence if they fail to register an interest in an individual prior to supplying them to engage in regulated activity.

Article 17: Educational establishments: checks on members of governing body

Article 17 provides that an appropriate officer commits an offence if he fails to obtain within a prescribed period relevant information (as defined in Schedule 5) in relation to a person who is appointed to the governing body of an educational establishment.

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Article 18: Office holders: offences

Article 18 enables the Secretary of State to require (through regulations) individuals in specified positions of authority to be subject to monitoring; and to require a specified person to check a person in a specified position of authority which is a regulated position.

Article 20: Exception to requirement to make monitoring check

Article 20 lists regulated activity (in relation to vulnerable adults) in relation to which regulated activity providers are exempted from the obligation to make an appropriate check under article 15, and from the requirement in article 14 to ensure that the individual is subject to monitoring.

Article 21: Employment by HSS Body

Article 21 relates specifically to those regulated activity providers who employ people in relevant HSS employment which is defined as employment with one of the HSS bodies within the meaning at article 2. Where a person is employed in relevant HSS employment, and provided that employment continues, he can undertake other such employment without the need for a monitoring check to be made in relation to that other employment.

Article 22 and 23: Offences

Articles 22 and 23 provides for certain individuals, in certain circumstances, to be liable for specified offences.

Article 25: Controlled activity relating to children

Article 25 defines controlled activity relation to children. Broadly, this is any activity in the FE and health sectors which is carried out frequently on two or more days in a 30 day period and involves the opportunity for contact with children or access to children's medical records but is not a regulated activity.

This article allows for the definition of controlled activity in relation to children to be amended in the future.

Article 26: Controlled activity relating to vulnerable adults

Article 26 defines controlled activity relating to vulnerable adults. Broadly, this is activity in the health and social care sectors which is carried out frequently and involves the opportunity for contact with vulnerable adults or access to vulnerable adults' health or social care records but is not a regulated activity.

This article allows for the definition of controlled activity in relation to vulnerable adults to be amended in the future.

Article 27: Controlled activity: regulations

Article 27 provides for a power to make regulations as to the steps employers must take when engaging an individual in controlled activity.

Article 28: Monitoring

Article 28 sets out the criteria that must be satisfied for a person to be subject to monitoring in relation to a regulated activity relating to children and/or vulnerable adults. On a monitoring application being made the Secretary of State must make enquiries to obtain relevant information which includes information about his convictions and cautions and information from police forces relevant to the regulated activity.

Article 28 also empowers the Secretary of State to set a fee to be paid by applicants for monitoring. It is intended that the Vetting and Barring Scheme will be funded from income from a flat fee to be paid once when applicants first apply to be monitored. The fee is to be waived in the case of people who work with vulnerable groups on a voluntary basis.

Article 29: Monitoring fees

Article 29 makes further provision relating to fees required to be paid under article 28 (1) (d). During the first five years that monitoring is functioning, when setting the level of the monitoring fee the Secretary of State will be able to take into account the costs of the Vetting and Barring Scheme over the whole of that period. This will mean he can set a fee that will not vary

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significantly over the first five years of the scheme, and that will enable the scheme to break even over the first five years.

Article 31: Prohibition of requirement to produce certain records

Article 31 makes it an offence for employers and others to require an individual (or a third party) to produce the information released to the individual under article 28 (4) when they apply to be monitored in connection with employment or as a condition for the provision of services.

An exception is made from this offence for parents and other private employers since they have a legitimate interest in the information and cannot receive it through other channels.

Article 32: Provision of vetting information

Article 32 provides for application to be made to the Secretary of State for relevant information in relation to an individual by applicants who fall within the table at Schedule 5.

An application for relevant information is to be made in the prescribed form and must include an appropriate declaration. This declaration must state that the applicant falls within column 1 of the table at Schedule 5, and so has a right to the information, and that the individual has consented to the check. The consent provision will help to protect information held by the scheme. Consent is not needed when an application is made by an appropriate officer within the meaning of article 17 who is making a check on a member of a governing body of a school or other educational establishment.

Schedule 5: Vetting information

Schedule 5 contains a list of those who are eligible to make checks under article 32.

Article 33: Meaning of relevant information in Article 32

Article 33 provides for the information which will be released by the Secretary of State under article 32. The “relevant information” will indicate the individual’s status in the scheme to the applicant by showing whether they are monitored and, if they are, whether they are undergoing assessment. Individuals will be shown as “undergoing assessment” if initial information about them is being gathered by the Secretary of State under article 28 in response to an application to be monitored or if they are being considered for barring by the IBB.

Article 34: Notification of cessation of monitoring

Article 34 provides for a system to notify people who have checked an individual when that individual ceases to be monitored. All those eligible to make checks will be able to register to be notified if the individual ceases to be subject to monitoring (in relation to a regulated activity relating to children and/or vulnerable adults) by making an application in the prescribed form which includes an appropriate declaration.

The Secretary of State will be under a duty to notify all those with a registered interest in an individual when that individual ceases to be subject to monitoring in relation to the regulated activity in respect of which the interest was registered. The person who registered the interest will be able to take action to find out why the individual is no longer monitored and to prevent them engaging in regulated or controlled activity, if that is appropriate.

Article 35: Cessation of registration

Article 35 provides that registration must cease once the Secretary of State has notified the person that the individual is no longer monitored or when the person who registered their interest requests that it ceases. The individual may also request that registration cease in prescribed circumstances, which we intend will include a requirement to prove that this is appropriate.

Article 36: Declarations under articles 32 and 34

Article 36 makes it an offence to make a false declaration under articles 32 and 34. This offence will deter people from trying fraudulently to access private information about an individual.

Article 37: Regulated activity providers: duty to refer

Article 37 relates to referrals of information from employers to the IBB. It sets out the circumstances in which a regulated activity provider and a responsible person (within the meaning of article 27) must provide the IBB with prescribed relevant information about an individual.

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Article 38: Personnel suppliers: duty to refer

Article 38 sets out the circumstances in which a personnel supplier must provide the IBB with relevant information about an individual. Personnel suppliers are employment agencies and businesses and education institutions that supply individuals for regulated or controlled activity. The duty to refer also applies if the personnel supplier would or might have stopped supplying the person if the individual had not otherwise stopped being engaged in the regulated activity.

Article 39: Regulated activity providers: duty to provide information on request etc.

Article 39 relates to referrals of information from employers to the IBB. It sets out the circumstances in which a regulated activity provider and a responsible person (within the meaning of article 27) must provide the IBB with prescribed relevant information about an individual.

Article 40: Duty to provide information: offences

Article 40 makes it an offence not to comply with the duties in articles 37, 38 and 39.

Article 41 and 42: Education and Library Boards and HSS Bodies: duty to refer and duty to provide information on request

Articles 41 and 42 sets out the circumstances in which an education and library board (“a board”) and an HSS body must provide the IBB with relevant information about an individual.

Articles 43 to 46: Registers

Articles 43 to 46 make provision regarding the professional bodies and the relevant registers which they keep.

Article 43 and 44 sets out the circumstances in which a professional body is under a duty to provide relevant information to the IBB.

Article 45 makes provision for the sharing of information by the Secretary of State and the IBB with the keeper of registers (as specified in the table in article 43).

Articles 47 to 52: Supervisory Authorities

Articles 47 to 52 make provision regarding the circumstances when supervisory authorities (as specified in article 47 (7)) are under a duty to provide relevant information to the IBB, or the circumstances when the Secretary of State must provide a supervisory authority with information in connection with its functions.

Article 53: Crown application

Article 53 provides that the duties of the Order apply to the Crown. The Crown itself may not be prosecuted under an offence in the Order but that is not the case for a Crown employee.

Each government department or other Crown body should be regarded as the regulated activity provider in relation to any regulated activity in which it is engaged.

Article 55: Fostering

Article 55, in conjunction with article 11 and paragraph 1 (5) of Schedule 2, ensure that it is an offence for a barred person to act as an authority foster parent, foster carer with whom a child has been placed by a voluntary organisation, or a private foster parent. Any organisation that arranges a placement will be required to check the carer’s status.

Article 56: Alignment with the rest of the UK

Article 56 provides a general power to make amendments to any legislation having regard to England and Wales and Scottish legislation equivalent to this Order.

Article 59: Transitional provisions

Article 59 gives effect to Schedule 6.

Schedule 6: Transitional provisions

Schedule 6 provides powers to ensure a transition can take place from the current barring schemes to the new barred lists.