



# Protection of Freedoms Act 2012

## 2012 CHAPTER 9

### PART 5

SAFEGUARDING VULNERABLE GROUPS, CRIMINAL RECORDS ETC.

### CHAPTER 1

SAFEGUARDING OF VULNERABLE GROUPS

*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).

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*Status: This is the original version (as it was originally enacted).*

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(3) In section 43 of the Act of 2006 (registers: notice of barring etc.) for subsections (1) to (5) substitute—

“(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 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”,

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- (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”,
  - (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
  - (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)—

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- (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—
  - “(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—

“(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.”