



# 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—

*Status: This version of this part contains provisions that are prospective.*

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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

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- (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),
  - (g) omit sub-paragraph (13A) (exercise of certain functions of Care Quality Commission to be regulated activity),

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- (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) ”.

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#### Commencement Information

- 11** S. 64 in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234](#), **art. 2(a)** (with [art. 4](#))

### 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 ”.

#### Commencement Information

- 12** S. 65 in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234](#), **art. 2(b)** (with [art. 4](#))

### 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.

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- (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—
- (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—

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- (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,
  - (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)”.

#### Commencement Information

- I3** S. 66 in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234](#), [art. 2\(c\)](#)

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## 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—

- (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.”



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- (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.

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- (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 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—

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- “(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”.

#### Commencement Information

- I4** S. 67 in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234](#), **art. 2(d)** (with [arts. 6-16](#)) (as amended (31.3.2014) by [S.I. 2014/831](#), art. 2(2))

*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).

#### Commencement Information

- I5** S. 68 in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234](#), **art. 2(e)**

### 69 Abolition of monitoring

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

#### Commencement Information

- I6** S. 69 in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234](#), **art. 2(f)**

*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

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(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.”

#### Commencement Information

**I7** S. 70 in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234](#), **art. 2(g)**

## 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.”

#### Commencement Information

**I8** S. 71 in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234](#), **art. 2(h)**

## 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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*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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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,

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (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.

*Status: This version of this part contains provisions that are prospective.*

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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.

#### Commencement Information

- 19** S. 72(4)-(6) in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234](#), [art. 2\(i\)](#)

PROSPECTIVE

### 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.

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (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
  - (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.”

PROSPECTIVE

#### 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—



*Status: This version of this part contains provisions that are prospective.*

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- “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 “—
- (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)
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- (a) in subsection (1)—
- (i) for “must” substitute “ may ”, and
- (ii) omit “prescribed”,

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (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—
- “(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.

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*Status: This version of this part contains provisions that are prospective.*

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- (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).

*Status: This version of this part contains provisions that are prospective.*

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### Commencement Information

- I10** S. 75(1)(2) in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234](#), [art. 2\(j\)](#)
- I11** S. 75(3) in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) for specified purposes by [S.I. 2012/2234](#), [art. 2\(k\)](#)
- I12** S. 75(4)-(6) in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234](#), [art. 2\(l\)](#)

## 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”,
  - (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—

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*Status: This version of this part contains provisions that are prospective.*

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- “(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)”,

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (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—
    - “(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.”

#### **Commencement Information**

**I13** S. 76(1)(2)(3)(f)(4)(f)(5) in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234, art. 2\(m\)](#)

#### **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

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*Status: This version of this part contains provisions that are prospective.*

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- (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),

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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.”

#### **Commencement Information**

- I14** S. 77 in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234](#), [art. 2\(n\)](#)

#### *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.

#### **Commencement Information**

- I15** S. 78 in force at 10.8.2012 for specified purposes by [S.I. 2012/2075](#), [art. 2\(a\)](#)
- I16** S. 78 in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) for specified purposes by [S.I. 2012/2234](#), [art. 2\(o\)](#)

## **CHAPTER 2**

### **CRIMINAL RECORDS**

#### *Safeguards in relation to certificates*

### **79 Restriction on information provided to certain persons**

- (1) Omit section 93 of the Policing and Crime Act 2009 (which, if commenced, would insert section 112(2A) into the Police Act 1997 requiring copies of certain criminal conviction certificates to be given to employers etc.).
- (2) Omit—
  - (a) section 113A(4) of the Police Act 1997 (requirement to send copy of criminal record certificate to registered person), and
  - (b) section 113B(5) and (6) of that Act (requirement to give relevant information, and copy of enhanced criminal record certificate to registered person).



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*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (3) After section 120AB of the Police Act 1997 (procedure for certain cancellations or suspensions of registration) insert—

**“120AC Registered persons: information on progress of an application**

- (1) The Secretary of State must, in response to a request from a person who is acting as the registered person in relation to an application under section 113A or 113B, inform that person whether or not a certificate has been issued in response to the application.
- (2) Subsections (3) and (4) apply if, at the time a request is made under subsection (1), a certificate has been issued.
- (3) In the case of a certificate under section 113A, if it was a certificate stating that there is no relevant matter recorded in central records, the Secretary of State may inform the person who made the request that the certificate was such a certificate.
- (4) In the case of a certificate under section 113B, if it was a certificate—
  - (a) stating that there is no relevant matter recorded in central records and no information provided in accordance with subsection (4) of that section, and
  - (b) if section 113BA(1) or 113BB(1) applies to the certificate, containing no suitability information indicating that the person to whom the certificate is issued—
    - (i) is barred from regulated activity relating to children or to vulnerable adults, or
    - (ii) is subject to a direction under 128 of the Education and Skills Act 2008 or section 167A of the Education Act 2002,the Secretary of State may inform the person who made the request that the certificate was such a certificate.
- (5) If no certificate has been issued, the Secretary of State must inform the person who made the request of such other matters relating to the processing of the application as the Secretary of State considers appropriate.
- (6) Subject to subsections (2) to (4), nothing in this section permits the Secretary of State to inform a person who is acting as the registered person in relation to an application under section 113A or 113B of the content of any certificate issued in response to the application.
- (7) The Secretary of State may refuse a request under subsection (1) if it is made after the end of a prescribed period beginning with the day on which the certificate was issued.
- (8) In this section—

“central records” and “relevant matter” have the same meaning as in section 113A,

“suitability information” means information required to be included in a certificate under section 113B by virtue of section 113BA or 113BB.

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (9) Expressions in subsection (4)(b) and in the Safeguarding Vulnerable Groups Act 2006 have the same meaning in that paragraph as in that Act.

### **120AD Registered persons: copies of certificates in certain circumstances**

- (1) Subsection (2) applies if—
- (a) the Secretary of State gives up-date information in relation to a criminal record certificate or enhanced criminal record certificate,
  - (b) the up-date information is advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate, and
  - (c) the person whose certificate it is in respect of which the up-date information is given applies for a new criminal record certificate or (as the case may be) enhanced criminal record certificate.
- (2) The Secretary of State must, in response to a request made within the prescribed period by the person who is acting as the registered person in relation to the application, send to that person a copy of any certificate issued in response to the application if the registered person—
- (a) has counter-signed the application or transmitted it to the Secretary of State under section 113A(2A) or 113B(2A),
  - (b) has informed the Secretary of State that the applicant for the new certificate has not, within such period as may be prescribed, sent a copy of it to a person of such description as may be prescribed, and
  - (c) no prescribed circumstances apply.
- (3) The power under subsection (2)(b) to prescribe a description of person may be exercised to describe the registered person or any other person.
- (4) In this section “up-date information” has the same meaning as in section 116A.”

#### **Modifications etc. (not altering text)**

- C1** S. 79 extended (Guernsey) (with modifications) (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Guernsey\) \(Amendment\) Order 2012 \(S.I. 2012/1762\)](#), art. 4(1)(2), [Sch. 1](#)
- C2** S. 79 extended (Jersey) (with modifications) (17.10.2012 coming into force in accordance with art. 1(2)(3) by [The Police Act 1997 \(Criminal Records\) \(Jersey\) \(Amendment\) Order 2012 \(S.I. 2012/2591\)](#), art. 1(2)(3)4(1)(2)(a), [Sch. 1](#) (with art. 5)
- C3** S. 79 extended (Isle of Man) (with modifications) (with effect in accordance with art. 1(3)(4) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Isle of Man\) \(Amendment\) Order 2012 \(S.I. 2012/2598\)](#), arts. 1(2), 4(1)(a), [Sch. 1](#)

#### **Commencement Information**

- I17** S. 79(1) in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234](#), [art. 2\(p\)](#)
- I18** S. 79(2)(a) in force at 17.6.2013 by [S.I. 2013/1180](#), [art. 2\(a\)](#)
- I19** S. 79(2)(b) in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) for specified purposes by [S.I. 2012/2234](#), [art. 2\(q\)](#)
- I20** S. 79(2)(b)(3) in force at 17.6.2013 in so far as not already in force by [S.I. 2013/1180](#), [art. 2\(a\)](#)

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- I21** S. 79(3) in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) for specified purposes by S.I. 2012/2234, **art. 2(r)**

## **80 Minimum age for applicants for certificates or to be registered**

- (1) In sections 112(1), 113A(1), 113B(1), 114(1) and 116(1) of the Police Act 1997 (applications for certificates), before the word “and” at the end of paragraph (a), insert—
- “(aa) is aged 16 or over at the time of making the application,”.
- (2) In section 120(4) of that Act (registered persons)—
- (a) in paragraph (b)—
- (i) after “person” insert “ who is ”, and
- (ii) after “enactment” insert “ and who, in the case of an individual, is aged 18 or over ”, and
- (b) in paragraph (c) after “individual” insert “ aged 18 or over ”.

### **Modifications etc. (not altering text)**

- C4** S. 80 extended (Guernsey) (with modifications) (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by **The Police Act 1997 (Criminal Records) (Guernsey) (Amendment) Order 2012 (S.I. 2012/1762), art. 4(1)(2), Sch. 1**
- C5** S. 80 extended (Jersey) (with modifications) (17.10.2012 coming into force in accordance with art. 1(2)(3) by **The Police Act 1997 (Criminal Records) (Jersey) (Amendment) Order 2012 (S.I. 2012/2591), art. 1(2)(3)4(1)(2)(b), Sch. 1** (with art. 5)
- C6** S. 80 extended (Isle of Man) (with modifications) (with effect in accordance with art. 1(3)(4) of the amending S.I.) by **The Police Act 1997 (Criminal Records) (Isle of Man) (Amendment) Order 2012 (S.I. 2012/2598), arts. 1(2), 4(1)(b), Sch. 1**

### **Commencement Information**

- I22** S. 80 in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by S.I. 2012/2234, **art. 2(s)** (with art. 5)

## **81 Additional grounds for refusing an application to be registered**

After subsection (3) of section 120AA of the Police Act 1997 (refusal, etc. of registration on grounds not related to disclosure) insert—

- “(4) Subsection (6) applies if an application is made under section 120 by an individual who—
- (a) has previously been a registered person; and
- (b) has been removed from the register (otherwise than at that individual's own request).
- (5) Subsection (6) also applies if an application is made under section 120 by a body corporate or unincorporate which—
- (a) has previously been a registered person; and
- (b) has been removed from the register (otherwise than at its own request).

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) The Secretary of State may refuse the application.”

#### **Commencement Information**

**I23** S. 81 in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234](#), [art. 2\(t\)](#)

## **82 Enhanced criminal record certificates: additional safeguards**

(1) In subsection (4) of section 113B of the Police Act 1997 (enhanced criminal record certificates: requests by the Secretary of State to chief officers for information)—

- (a) for “the chief officer of every relevant police force” substitute “ any relevant chief officer ”,
- (b) omit “, in the chief officer's opinion”,
- (c) in paragraph (a), for “might” substitute “ the chief officer reasonably believes to ”, and
- (d) in paragraph (b), at the beginning insert “ in the chief officer's opinion, ”.

(2) After subsection (4) of that section of that Act insert—

“(4A) In exercising functions under subsection (4) a relevant chief officer must have regard to any guidance for the time being published by the Secretary of State.”

(3) In subsection (9) of that section of that Act—

- (a) before the definition of “relevant police force” insert—

““relevant chief officer” means any chief officer of a police force who is identified by the Secretary of State for the purposes of making a request under subsection (4).”, and”

- (b) omit the definition of “relevant police force”.

(4) After section 117(1) of that Act (disputes about accuracy of certificates) insert—

“(1A) Where any person other than the applicant believes that the information contained in a certificate under any of sections 112 to 116 is inaccurate, that person may make an application in writing to the Secretary of State for a decision as to whether or not the information is inaccurate.”

(5) After section 117 of that Act insert—

### **“117A Other disputes about section 113B(4) information**

(1) Subsection (2) applies if a person believes that information provided in accordance with section 113B(4) and included in a certificate under section 113B or 116 —

- (a) is not relevant for the purpose described in the statement under section 113B(2) or (as the case may be) 116(2), or
- (b) ought not to be included in the certificate.

(2) The person may apply in writing to the independent monitor appointed under section 119B for a decision as to whether the information is information which falls within subsection (1)(a) or (b) above.

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (3) The independent monitor, on receiving such an application, must ask such chief officer of a police force as the independent monitor considers appropriate to review whether the information concerned is information which—
  - (a) the chief officer reasonably believes to be relevant for the purpose described in the statement under section 113B(2) or (as the case may be) 116(2), and
  - (b) in the chief officer's opinion, ought to be included in the certificate.
- (4) In exercising functions under subsection (3), the chief officer concerned must have regard to any guidance for the time being published under section 113B(4A).
- (5) If, following a review under subsection (3), the independent monitor considers that any of the information concerned is information which falls within subsection (1)(a) or (b)—
  - (a) the independent monitor must inform the Secretary of State of that fact, and
  - (b) on being so informed, the Secretary of State must issue a new certificate.
- (6) In issuing such a certificate, the Secretary of State must proceed as if the information which falls within subsection (1)(a) or (b) had not been provided under section 113B(4).
- (7) In deciding for the purposes of this section whether information is information which falls within subsection (1)(a) or (b), the independent monitor must have regard to any guidance for the time being published under section 113B(4A).
- (8) Subsections (10) and (11) of section 113B apply for the purposes of this section as they apply for the purposes of that section.”

#### **Modifications etc. (not altering text)**

- C7** S. 82 extended (Guernsey) (with modifications) (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Guernsey\) \(Amendment\) Order 2012 \(S.I. 2012/1762\)](#), art. 4(1)(2), **Sch. 1**
- C8** S. 82 extended (Jersey) (with modifications) (17.10.2012 coming into force in accordance with art. 1(2)(3) by [The Police Act 1997 \(Criminal Records\) \(Jersey\) \(Amendment\) Order 2012 \(S.I. 2012/2591\)](#), art. 1(2)(3)4(1)(2)(c), **Sch. 1** (with art. 5)
- C9** S. 82 extended (Isle of Man) (with modifications) (with effect in accordance with art. 1(3)(4) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Isle of Man\) \(Amendment\) Order 2012 \(S.I. 2012/2598\)](#), arts. 1(2), 4(1)(c), **Sch. 1**

#### **Commencement Information**

- I24** S. 82 in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234](#), **art. 2(u)**

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

### *Up-dating and content of certificates*

## 83 Up-dating certificates

After section 116 of the Police Act 1997 (enhanced criminal record certificates: judicial appointments and Crown employment) insert—

### “116A Up-dating certificates

- (1) The Secretary of State must, on the request of a relevant person and subject to subsection (2), give up-date information to that person about—
  - (a) a criminal conviction certificate,
  - (b) a criminal record certificate, or
  - (c) an enhanced criminal record certificate,
 which is subject to up-date arrangements.
- (2) The Secretary of State may impose conditions about—
  - (a) the information to be supplied in connection with such a request for the purpose of enabling the Secretary of State to decide whether the person is a relevant person,
  - (b) any other information to be supplied in connection with such a request.
- (3) For the purposes of subsection (1) a certificate is subject to up-date arrangements if condition A, B or C is met and the arrangements have not ceased to have effect in accordance with a notice given under section 118(3B).
- (4) Condition A is that—
  - (a) the individual who applied for the certificate made an application at the same time to the Secretary of State for the certificate to be subject to up-date arrangements,
  - (b) the individual has paid in the prescribed manner any prescribed fee,
  - (c) the Secretary of State has granted the application for the certificate to be subject to up-date arrangements, and
  - (d) the period of 12 months beginning with the date on which the grant comes into force has not expired.
- (5) Condition B is that—
  - (a) the individual whose certificate it is has made an application to the Secretary of State to renew or (as the case may be) further renew unexpired up-date arrangements in relation to the certificate,
  - (b) the individual has paid in the prescribed manner any prescribed fee,
  - (c) the Secretary of State has granted the application,
  - (d) the grant has come into force on the expiry of the previous up-date arrangements, and
  - (e) the period of 12 months beginning with the date on which the grant has come into force has not expired.
- (6) Condition C is that—
  - (a) the certificate was issued under section 117(2) or 117A(5)(b), and
  - (b) the certificate which it superseded—

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*Status: This version of this part contains provisions that are prospective.*

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- (i) was subject to up-date arrangements immediately before it was superseded, and
  - (ii) would still be subject to those arrangements had it not been superseded.
- (7) The Secretary of State must not grant an application as mentioned in subsection (4)(c) or (5)(c) unless any fee prescribed under subsection (4)(b) or (as the case may be) (5)(b) has been paid in the manner so prescribed.
- (8) In this section “up-date information” means—
  - (a) in relation to a criminal conviction certificate or a criminal record certificate—
    - (i) information that there is no information recorded in central records which would be included in a new certificate but is not included in the current certificate, or
    - (ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate,
  - (b) in relation to an enhanced criminal record certificate which includes suitability information relating to children or vulnerable adults—
    - (i) information that there is no information recorded in central records, no information of the kind mentioned in section 113B(4), and no information of the kind mentioned in section 113BA(2) or (as the case may be) 113BB(2), which would be included in a new certificate but is not included in the current certificate, or
    - (ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate, and
  - (c) in relation to any other enhanced criminal record certificate—
    - (i) information that there is no information recorded in central records, nor any information of the kind mentioned in section 113B(4), which would be included in a new certificate but is not included in the current certificate, or
    - (ii) advice to apply for a new certificate or (as the case may be) request another person to apply for such a certificate.
- (9) If up-date information is given under subsection (8)(a)(i), (8)(b)(i) or (8)(c)(i) and the certificate to which that information relates is one to which subsection (10) applies, the up-date information must include that fact.
- (10) This subsection applies to a certificate which—
  - (a) in the case of a criminal conviction certificate, states that there are no convictions or conditional cautions of the applicant recorded in central records,
  - (b) in the case of a criminal record certificate, is as described in section 120AC(3), and
  - (c) in the case of an enhanced criminal record certificate, is as described in section 120AC(4).
- (11) In this section—
  - “central records” has the same meaning as in section 113A,
  - “criminal record certificate” includes a certificate under section 114,

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

“enhanced criminal record certificate” includes a certificate under section 116,

“exempted question” has the same meaning as in section 113A,

“relevant person” means—

- (a) in relation to a criminal conviction certificate—
  - (i) the individual whose certificate it is, or
  - (ii) any person authorised by the individual,
- (b) in relation to a criminal record certificate—
  - (i) the individual whose certificate it is, or
  - (ii) any person who is authorised by the individual and is seeking the information for the purposes of an exempted question, and
- (c) in relation to an enhanced criminal record certificate—
  - (i) the individual whose certificate it is, or
  - (ii) any person who is authorised by the individual and is seeking the information for the purposes of an exempted question asked for a purpose prescribed under section 113B(2)(b).”

#### **Modifications etc. (not altering text)**

- C10** S. 83 extended (Guernsey) (with modifications) (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Guernsey\) \(Amendment\) Order 2012 \(S.I. 2012/1762\)](#), art. 4(1)(2), **Sch. 1**
- C11** S. 83 extended (Jersey) (with modifications) (17.10.2012 coming into force in accordance with art. 1(2)(3) by [The Police Act 1997 \(Criminal Records\) \(Jersey\) \(Amendment\) Order 2012 \(S.I. 2012/2591\)](#), art. 1(2)(3)4(1)(2)(d), **Sch. 1** (with art. 5)
- C12** S. 83 extended (Isle of Man) (with modifications) (with effect in accordance with art. 1(3)(4) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Isle of Man\) \(Amendment\) Order 2012 \(S.I. 2012/2598\)](#), arts. 1(2), 4(1)(d), **Sch. 1**

#### **Commencement Information**

- I25** S. 83 in force at 17.6.2013 by [S.I. 2013/1180](#), **art. 2(b)**

## **84 Criminal conviction certificates: conditional cautions**

In section 112(2) of the Police Act 1997 (contents of a criminal conviction certificate)

- (a) in paragraph (a) after “conviction” insert “ or conditional caution ”, and
- (b) in paragraph (b) for “is no such conviction” substitute “ are no such convictions and conditional cautions ”.

#### **Modifications etc. (not altering text)**

- C13** S. 84 extended (Guernsey) (with modifications) (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Guernsey\) \(Amendment\) Order 2012 \(S.I. 2012/1762\)](#), art. 4(1)(2), **Sch. 1**



*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- C14** S. 84 extended (Jersey) (with modifications) (17.10.2012 coming into force in accordance with art. 1(2)(3)) by [The Police Act 1997 \(Criminal Records\) \(Jersey\) \(Amendment\) Order 2012 \(S.I. 2012/2591\)](#), art. 1(2)(3)4(1)(2)(e), **Sch. 1** (with art. 5)
- C15** S. 84 extended (Isle of Man) (with modifications) (with effect in accordance with art. 1(3)(4) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Isle of Man\) \(Amendment\) Order 2012 \(S.I. 2012/2598\)](#), arts. 1(2), 4(1)(e), **Sch. 1**

#### Commencement Information

- I26** S. 84 in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234](#), **art. 2(v)**

#### Other

### 85 Inclusion of cautions etc. in national police records

After subsection (4) of section 27 of the Police and Criminal Evidence Act 1984 (recordable offences) insert—

“(4A) In subsection (4) “conviction” includes—

- (a) a caution within the meaning of Part 5 of the Police Act 1997; and
- (b) a reprimand or warning given under section 65 of the Crime and Disorder Act 1998.”

#### Commencement Information

- I27** S. 85 in force at 1.7.2012 by [S.I. 2012/1205](#), **art. 3(w)**

### 86 Out of date references to certificates of criminal records

In section 75(4) of the Data Protection Act 1998 (commencement of section 56 of that Act not to be earlier than the first day on which certain sections of the Police Act 1997 relating to certificates of criminal records are all in force) for “sections 112, 113 and 115” substitute “sections 112, 113A and 113B”.

#### Commencement Information

- I28** S. 86 in force at 10.9.2012 immediately after the coming into force of the Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012 (S.I. 2012/2157) by [S.I. 2012/2234](#), **art. 2(w)**

## CHAPTER 3

### THE DISCLOSURE AND BARRING SERVICE

#### General

### 87 Formation and constitution of DBS

- (1) There is to be a body corporate known as the Disclosure and Barring Service.

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (2) In this Chapter “DBS” means the Disclosure and Barring Service.
- (3) Schedule 8 (which makes further provision about DBS) has effect.

**Modifications etc. (not altering text)**

- C16** S. 87 extended (Guernsey) (with modifications) (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Guernsey\) \(Amendment\) Order 2012 \(S.I. 2012/1762\)](#), art. 4(1)(2), **Sch. 1**
- C17** S. 87 extended (Jersey) (with modifications) (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Jersey\) \(Amendment\) Order 2012 \(S.I. 2012/2591\)](#), arts. 1(2)(3), 4(1)(2)(f), **Sch. 1** (with art. 5)
- C18** S. 87 extended (Isle of Man) (with modifications) (with effect in accordance with art. 1(3)(4) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Isle of Man\) \(Amendment\) Order 2012 \(S.I. 2012/2598\)](#), arts. 1(2), 4(1)(f), **Sch. 1**

**Commencement Information**

- I29** S. 87(1)(2) in force at 15.10.2012 by [S.I. 2012/2521](#), **art. 2(a)**
- I30** S. 87(3) in force for specified purposes at 15.10.2012 by [S.I. 2012/2521](#), **art. 2(b)**
- I31** S. 87(3) in force for specified purposes at 1.12.2012 by [S.I. 2012/2521](#), **art. 3(a)**

**88 Transfer of functions to DBS and dissolution of ISA**

- (1) The Secretary of State may by order transfer any function of ISA to DBS.
- (2) The Secretary of State may by order transfer to DBS any function of the Secretary of State under, or in connection with—
- (a) Part 5 of the Police Act 1997 (criminal records),
  - (b) the Safeguarding Vulnerable Groups Act 2006, or
  - (c) the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (S.I. 2007/1351 (N.I. 11)).
- (3) The Secretary of State may by order provide for the dissolution of ISA.
- (4) In this section—

“function” does not include any power of the Secretary of State to make an order or regulations,

“ISA” means the Independent Safeguarding Authority.

**Modifications etc. (not altering text)**

- C19** S. 88 extended (Guernsey) (with modifications) (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Guernsey\) \(Amendment\) Order 2012 \(S.I. 2012/1762\)](#), art. 4(1)(2), **Sch. 1**
- C20** S. 88 extended (Jersey) (with modifications) (17.10.2012 coming into force in accordance with art. 1(2)(3)) by [The Police Act 1997 \(Criminal Records\) \(Jersey\) \(Amendment\) Order 2012 \(S.I. 2012/2591\)](#), art. 1(2)(3)4(1)(2)(g), **Sch. 1** (with art. 5)
- C21** S. 88 extended (Isle of Man) (with modifications) (with effect in accordance with art. 1(3)(4) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Isle of Man\) \(Amendment\) Order 2012 \(S.I. 2012/2598\)](#), arts. 1(2), 4(1)(g), **Sch. 1**

*Status: This version of this part contains provisions that are prospective.*

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## Supplementary

### 89 Orders under section 88

- (1) Any power to make an order under section 88—
  - (a) is exercisable by statutory instrument,
  - (b) includes power to make consequential, supplementary, incidental, transitional, transitory or saving provision,
  - (c) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an enactment (whenever passed or made and including this Act).
- (2) Subject to subsection (3), a statutory instrument containing an order under section 88 is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) A statutory instrument containing an order under section 88 which neither amends nor repeals any provision of primary legislation is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) If a draft of an instrument containing an order under section 88 (alone or with other provision) would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.
- (5) In this section—
  - “enactment” includes a Measure or Act of the National Assembly for Wales and Northern Ireland legislation,
  - “primary legislation” means—
    - (a) a public general Act,
    - (b) a Measure or Act of the National Assembly for Wales, and
    - (c) Northern Ireland legislation.

#### Modifications etc. (not altering text)

- C22** S. 89 extended (Guernsey) (with modifications) (coming into force in accordance with art. 1(2)(3) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Guernsey\) \(Amendment\) Order 2012 \(S.I. 2012/1762\)](#), art. 4(1)(2), [Sch. 1](#)
- C23** S. 89 extended (Jersey) (with modifications) (17.10.2012 coming into force in accordance with art. 1(2)(3) by [The Police Act 1997 \(Criminal Records\) \(Jersey\) \(Amendment\) Order 2012 \(S.I. 2012/2591\)](#), art. 1(2)(3)4(1)(2)(h), [Sch. 1](#) (with art. 5)
- C24** S. 89 extended (Isle of Man) (with modifications) (with effect in accordance with art. 1(3)(4) of the amending S.I.) by [The Police Act 1997 \(Criminal Records\) \(Isle of Man\) \(Amendment\) Order 2012 \(S.I. 2012/2598\)](#), arts. 1(2), 4(1)(h), [Sch. 1](#)

### 90 Transfer schemes in connection with orders under section 88

- (1) The Secretary of State may, in connection with an order under section 88, make a scheme for the transfer to DBS of property, rights or liabilities of ISA or the Secretary of State.
- (2) The things that may be transferred under a transfer scheme include—

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- (a) property, rights and liabilities which could not otherwise be transferred,
  - (b) property acquired, and rights and liabilities arising, after the making of the scheme.
- (3) A transfer scheme may make consequential, supplementary, incidental, transitional, transitory or saving provision and may, in particular—
- (a) create rights, or impose liabilities, in relation to property or rights transferred,
  - (b) make provision about the continuing effect of things done by, on behalf of or in relation to the transferor in respect of anything transferred,
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred,
  - (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee,
  - (e) make provision for the shared ownership or use of property,
  - (f) if the TUPE regulations do not apply in relation to the transfer, make provision which is the same or similar.
- (4) A transfer scheme may provide—
- (a) for modification by agreement,
  - (b) for modifications to have effect from the date when the original scheme came into effect.
- (5) A transfer scheme may confer a discretion on the Secretary of State to pay compensation to any person whose interests are adversely affected by the scheme.
- (6) A transfer scheme may be included in an order under section 88 but, if not so included, must be laid before Parliament after being made.
- (7) For the purposes of this section—
- (a) references to rights and liabilities of ISA include references to rights and liabilities of ISA relating to a contract of employment, and
  - (b) references to rights and liabilities of the Secretary of State include references to rights and liabilities of the Crown relating to the terms of employment of individuals in the civil service.
- (8) Accordingly, a transfer scheme may, in particular, provide—
- (a) for an employee of ISA or (as the case may be) an individual employed in the civil service to become an employee of DBS,
  - (b) for the individual's contract of employment with ISA or (as the case may be) terms of employment in the civil service to have effect (subject to any necessary modifications) as the terms of the individual's contract of employment with DBS,
  - (c) for the transfer to DBS of rights and liabilities of ISA or (as the case may be) the Crown under or in connection with the individual's terms of employment.
- (9) In this section—
- “civil service” means the civil service of the State,
  - “ISA” means the Independent Safeguarding Authority,
  - “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246),

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references to the transfer of property include the grant of a lease.

## 91 Tax in connection with transfer schemes

- (1) The Treasury may by order make provision varying the way in which a relevant tax has effect in relation to—
  - (a) anything transferred under a transfer scheme, or
  - (b) anything done for the purposes of, or in relation to, a transfer under a transfer scheme.
- (2) The provision which may be made under subsection (1)(a) includes, in particular, provision for—
  - (a) a tax provision not to apply, or to apply with modifications, in relation to anything transferred,
  - (b) anything transferred to be treated in a specified way for the purposes of a tax provision,
  - (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything transferred.
- (3) The provision which may be made under subsection (1)(b) includes, in particular, provision for—
  - (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of, or in relation to, the transfer,
  - (b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way,
  - (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer.
- (4) The power to make an order under this section—
  - (a) is exercisable by statutory instrument,
  - (b) includes power to make consequential, supplementary, incidental, transitional, transitory or saving provision,
  - (c) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an enactment (whenever passed or made).
- (5) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of the House of Commons.
- (6) In this section—

“enactment” includes an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales and Northern Ireland legislation,

“relevant tax” means income tax, corporation tax, capital gains tax, stamp duty, stamp duty reserve tax or stamp duty land tax,

“tax provision” means any provision—

  - (a) about a relevant tax, and
  - (b) made by or under an enactment,

“transfer scheme” means a transfer scheme under section 88,

*Status: This version of this part contains provisions that are prospective.*

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and references to the transfer of property include the grant of a lease.

## CHAPTER 4

### DISREGARDING CERTAIN CONVICTIONS FOR BUGGERY ETC.<sup>[F1]</sup>: ENGLAND AND WALES]

#### Textual Amendments

**F1** Words in Pt. 5 Ch. 4 heading inserted (31.1.2017 for specified purposes, 28.6.2018 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), **ss. 168(3)**, 183(4)(5)(e); S.R. 2018/128, art. 2(a)

#### Modifications etc. (not altering text)

**C25** Pt. 5 Ch. 4: power to amend conferred (31.1.2017 for specified purposes) by [Policing and Crime Act 2017 \(c. 3\)](#), **ss. 166**, 183(1)(5)(e) (with s. 167)

### *General*

## 92 Power of Secretary of State to disregard convictions or cautions

- (1) A person who has been convicted of, or cautioned for, an offence <sup>[F2]</sup> in circumstances where the conduct constituting the offence was sexual activity between persons of the same sex] may apply to the Secretary of State for the conviction or caution to become a disregarded conviction or caution.
  - (2) A conviction or caution becomes a disregarded conviction or caution when conditions A and B are met.
  - (3) Condition A is that the Secretary of State decides that it appears that—
    - (a) <sup>[F3]</sup>any] other person involved in the <sup>[F4]</sup>sexual activity] was aged 16 or over,  
<sub>F5</sub> ...
    - <sup>[F6]</sup>(b) the offence has been repealed or, in the case of an offence at common law, abolished by enactment (whether or not it has been re-enacted or replaced), and
    - (c) the sexual activity would not, if occurring in the same circumstances at the point of decision, constitute an offence.]
  - (4) Condition B is that—
    - (a) the Secretary of State has given notice of the decision to the applicant under section 94(4)(b), and
    - (b) the period of 14 days beginning with the day on which the notice was given has ended.
  - (5) Sections 95 to 98 explain the effect of a conviction or caution becoming a disregarded conviction or caution.
- <sup>[F7]</sup>(6) Except in relation to service disciplinary proceedings, this section applies only in relation to persons convicted or cautioned in England and Wales.]
- <sup>[F8]</sup>(7) In this section “sexual activity” includes—

*Status: This version of this part contains provisions that are prospective.*

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- (a) any physical or affectionate activity which is of a type characteristic of people involved in an intimate personal relationship, and
- (b) conduct intended to lead to sexual activity.]

#### Textual Amendments

- F2** Words in s. 92(1) substituted (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(3\)](#), 208(1) (with s. 194(11)); S.I. 2023/641, [reg. 2\(a\)](#) (with [reg. 3](#))
- F3** Word in s. 92(3)(a) substituted (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(4\)\(a\)\(i\)](#), 208(1) (with s. 194(11)); S.I. 2023/641, [reg. 2\(a\)](#) (with [reg. 3](#))
- F4** Words in s. 92(3)(a) substituted (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(4\)\(a\)\(ii\)](#), 208(1) (with s. 194(11)); S.I. 2023/641, [reg. 2\(a\)](#) (with [reg. 3](#))
- F5** Word in s. 92(3)(a) omitted (13.6.2023) by virtue of [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(4\)\(a\)\(iii\)](#), 208(1) (with s. 194(11)); S.I. 2023/641, [reg. 2\(a\)](#) (with [reg. 3](#))
- F6** S. 92(3)(b)(c) substituted for s. 92(3)(b) (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(4\)\(b\)](#), 208(1) (with s. 194(11)); S.I. 2023/641, [reg. 2\(a\)](#) (with [reg. 3](#))
- F7** S. 92(6) inserted (31.1.2017 for specified purposes, 28.6.2018 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\)](#), [ss. 168\(4\)](#), 183(4)(5)(e); S.R. 2018/128, [art. 2\(a\)](#)
- F8** S. 92(7) inserted (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(5\)](#), 208(1) (with s. 194(11)); S.I. 2023/641, [reg. 2\(a\)](#) (with [reg. 3](#))

#### Modifications etc. (not altering text)

- C26** S. 92: power to amend conferred (31.1.2017 for specified purposes) by [Policing and Crime Act 2017 \(c. 3\)](#), [ss. 166](#), 183(1)(5)(e) (with s. 167)

#### Commencement Information

- I32** S. 92 in force at 1.10.2012 by [S.I. 2012/2234](#), [art. 3\(c\)](#)

### 93 Applications to the Secretary of State

- (1) An application under section 92 must be in writing.
- (2) It must state—
  - (a) the name, address and date of birth of the applicant,
  - (b) the name and address of the applicant at the time of the conviction or caution,
  - (c) so far as known to the applicant, the time when and the place where the conviction was made or the caution given and, for a conviction, the case number, and
  - (d) such other information as the Secretary of State may require.
- (3) It may include representations by the applicant or written evidence about <sup>F9</sup>—
  - (a) whether a conviction or caution is of a kind mentioned in section 92(1);
  - (b) the matters mentioned in condition A in that section.]

#### Textual Amendments

- F9** S. 93(3)(a)(b) substituted for words in s. 93(3) (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(6\)](#), 208(1) (with s. 194(11)); S.I. 2023/641, [reg. 2\(a\)](#) (with [reg. 3](#))

*Status: This version of this part contains provisions that are prospective.*

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#### Commencement Information

**I33** S. 93 in force at 1.10.2012 by [S.I. 2012/2234](#), [art. 3\(d\)](#)

### 94 Procedure for decisions by the Secretary of State

- (1) In considering [<sup>F10</sup>whether a conviction or caution is of a kind mentioned in section 92(1) or] whether to make a decision of the kind mentioned in condition A in [<sup>F11</sup>that section], the Secretary of State must, in particular, consider—
- (a) any representations or evidence included in the application, and
  - (b) any available record of the investigation of the offence and of any proceedings relating to it that the Secretary of State considers to be relevant.
- (2) The Secretary of State may not hold an oral hearing for the purpose of deciding [<sup>F12</sup>whether a conviction or caution is of a kind mentioned in section 92(1) or] whether to make a decision of the kind mentioned in condition A in [<sup>F13</sup>that section].
- [<sup>F14</sup>(2A) If the Secretary of State refuses an application on the basis that the caution or conviction is not of a kind mentioned in section 92(1), the Secretary of State must—
- (a) record the decision in writing, and
  - (b) give notice of it to the applicant.]
- (3) Subsection (4) applies if the Secretary of State—
- (a) decides that it appears as mentioned in condition A in section 92, or
  - (b) makes a different decision in relation to the matters mentioned in that condition.
- (4) The Secretary of State must—
- (a) record the decision in writing, and
  - (b) give notice of it to the applicant.

#### Textual Amendments

- F10** Words in s. 94(1) inserted (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(7\)\(a\)\(i\)](#), 208(1) (with s. 194(11)); [S.I. 2023/641](#), reg. 2(a) (with reg. 3)
- F11** Words in s. 94(1) substituted (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(7\)\(a\)\(ii\)](#), 208(1) (with s. 194(11)); [S.I. 2023/641](#), reg. 2(a) (with reg. 3)
- F12** Words in s. 94(2) inserted (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(7\)\(b\)\(i\)](#), 208(1) (with s. 194(11)); [S.I. 2023/641](#), reg. 2(a) (with reg. 3)
- F13** Words in s. 94(2) substituted (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(7\)\(b\)\(ii\)](#), 208(1) (with s. 194(11)); [S.I. 2023/641](#), reg. 2(a) (with reg. 3)
- F14** S. 94(2A) inserted (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(7\)\(c\)](#), 208(1) (with s. 194(11)); [S.I. 2023/641](#), reg. 2(a) (with reg. 3)

#### Commencement Information

**I34** S. 94 in force at 1.10.2012 by [S.I. 2012/2234](#), [art. 3\(e\)](#)



*Status: This version of this part contains provisions that are prospective.*

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### *Effect of disregard*

#### **95 Effect of disregard on police and other records**

- (1) The Secretary of State must by notice direct the relevant data controller to delete details, contained in relevant official records, of a disregarded conviction or caution.
- (2) A notice under subsection (1) may be given at any time after condition A in section 92 is met but no deletion may have effect before condition B in that section is met.
- (3) Subject to that, the relevant data controller must delete the details as soon as reasonably practicable.
- (4) Having done so, the relevant data controller must give notice to the person who has the disregarded conviction or caution that the details of it have been deleted.
- (5) In this section—
  - “delete”, in relation to such relevant official records as may be prescribed, means record with the details of the conviction or caution concerned—
    - (a) the fact that it is a disregarded conviction or caution, and
    - (b) the effect of it being such a conviction or caution,
  - “the names database” means the names database held by the [<sup>F15</sup>Secretary of State ] for the use of constables,
  - “official records” means records containing information about persons convicted of, or cautioned for, offences and kept by any court, police force, government department or local or other public authority in England and Wales for the purposes of its functions,
  - “prescribed” means prescribed by order of the Secretary of State,
  - “relevant data controller” means—
    - (a) in relation to the names database, any chief officer of police of a police force in England and Wales who is a data controller in relation to the details concerned,
    - (b) in relation to other relevant official records, such person as may be prescribed,
  - “relevant official records” means—
    - (a) the names database, and
    - (b) such other official records as may be prescribed.
- (6) An order under this section—
  - (a) may make different provision for different purposes,
  - (b) is to be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

#### **Textual Amendments**

**F15** Words in s. 95(5) substituted (7.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 8 para. 185](#); [S.I. 2013/1682](#), art. 3(v)

#### **Commencement Information**

**I35** S. 95 in force at 1.10.2012 by [S.I. 2012/2234](#), art. 3(f)

*Status: This version of this part contains provisions that are prospective.*

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## **96 Effect of disregard for disclosure and other purposes**

- (1) A person who has a disregarded conviction or caution is to be treated for all purposes in law as if the person has not—
  - (a) committed the offence,
  - (b) been charged with, or prosecuted for, the offence,
  - (c) been convicted of the offence,
  - (d) been sentenced for the offence, or
  - (e) been cautioned for the offence.
- (2) In particular—
  - (a) no evidence is to be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in England and Wales to prove that the person has done, or undergone, anything within subsection (1)(a) to (e), and
  - (b) the person is not, in any such proceedings, to be asked (and, if asked, is not to be required to answer) any question relating to the person's past which cannot be answered without acknowledging or referring to the conviction or caution or any circumstances ancillary to it.
- (3) Where a question is put to a person, other than in such proceedings, seeking information with respect to the previous convictions, cautions, offences, conduct or circumstances of any person—
  - (a) the question is to be treated as not relating to any disregarded conviction or caution, or any circumstances ancillary to it (and the answer to the question may be framed accordingly), and
  - (b) the person questioned is not to be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose that conviction or caution or any circumstances ancillary to it in answering the question.
- (4) Any obligation imposed on any person by any enactment or rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person is not to extend to requiring the disclosure of a disregarded conviction or caution or any circumstances ancillary to it.
- (5) A disregarded conviction or caution, or any circumstances ancillary to it, is not a proper ground for—
  - (a) dismissing or excluding a person from any office, profession, occupation or employment, or
  - (b) prejudicing the person in any way in any office, profession, occupation or employment.
- (6) This section is subject to section 97 but otherwise applies despite any enactment or rule of law to the contrary.
- (7) See also section 98 (meaning of “proceedings before a judicial authority” and “circumstances ancillary to a conviction or caution”).

### **Commencement Information**

**I36** S. 96 in force at 1.10.2012 by [S.I. 2012/2234](#), [art. 3\(g\)](#)

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## 97 Saving for Royal pardons etc.

Nothing in section 96 affects any right of Her Majesty, by virtue of Her Royal prerogative or otherwise, to grant a free pardon, to quash any conviction or sentence, or to commute any sentence.

### Commencement Information

I37 S. 97 in force at 1.10.2012 by [S.I. 2012/2234](#), [art. 3\(h\)](#)

## 98 Section 96: supplementary

- (1) In section 96 “proceedings before a judicial authority” includes (in addition to proceedings before any of the ordinary courts of law) proceedings before any tribunal, body or person having power—
- (a) by virtue of any enactment, law, custom or practice,
  - (b) under the rules governing any association, institution, profession, occupation or employment, or
  - (c) under any provision of an agreement providing for arbitration with respect to questions arising under that agreement,
- to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.
- (2) For the purposes of section 96, circumstances ancillary to a conviction are any circumstances of—
- (a) the offence which was the subject of the conviction;
  - (b) the conduct constituting the offence;
  - (c) any process or proceedings preliminary to the conviction;
  - (d) any sentence imposed in respect of the conviction;
  - (e) any proceedings (whether by way of appeal or otherwise) for reviewing the conviction or any such sentence;
  - (f) anything done in pursuance of, or undergone in compliance with, any such sentence.
- (3) For the purposes of section 96, circumstances ancillary to a caution are any circumstances of—
- (a) the offence which was the subject of the caution;
  - (b) the conduct constituting the offence;
  - (c) any process preliminary to the caution (including consideration by any person of how to deal with the offence and the procedure for giving the caution);
  - (d) any proceedings for the offence which take place before the caution is given;
  - (e) anything which happens after the caution is given for the purpose of bringing any such proceedings to an end;
  - (f) any judicial review proceedings relating to the caution;
  - (g) in the case of a warning under section 65 of the Crime and Disorder Act 1998 (reprimands and warnings for persons aged under 18), anything done in pursuance of, or undergone in compliance with, a requirement to participate in a rehabilitation programme under section 66(2) of that Act.

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

### Commencement Information

**I38** S. 98 in force at 1.10.2012 by [S.I. 2012/2234](#), [art. 3\(i\)](#)

### *Appeals and other supplementary provision*

## 99 Appeal against refusal to disregard convictions or cautions

- (1) The applicant may appeal to the High Court if—
  - (a) the Secretary of State [<sup>F16</sup>refuses an application on the basis mentioned in section 94(2A) or] makes a decision of the kind mentioned in section 94(3)(b), and
  - (b) the High Court gives permission for an appeal against the decision.
- (2) On such an appeal, the High Court must make its decision only on the basis of the evidence that was available to the Secretary of State.
- (3) If the High Court decides [<sup>F17</sup>—
  - (a) that the conviction or caution is of a kind mentioned in section 92(1), it must make an order to that effect;
  - (b) that it appears as mentioned in condition A of that section, it must make an order to that effect.]
- (4) Otherwise it must dismiss the appeal.
- (5) A conviction or caution to which an order under subsection (3) [<sup>F18</sup>(b)] relates becomes a disregarded conviction or caution when the period of 14 days beginning with the day on which the order was made has ended.
- (6) There is no appeal from a decision of the High Court under this section.

### Textual Amendments

- F16** Words in s. 99(1)(a) inserted (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(8\)\(a\)](#), 208(1) (with s. 194(11)); [S.I. 2023/641](#), [reg. 2\(a\)](#) (with [reg. 3](#))
- F17** S. 99(3)(a)(b) substituted for words in s. 99(3) (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(8\)\(b\)](#), 208(1) (with s. 194(11)); [S.I. 2023/641](#), [reg. 2\(a\)](#) (with [reg. 3](#))
- F18** Word in s. 99(5) inserted (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(8\)\(c\)](#), 208(1) (with s. 194(11)); [S.I. 2023/641](#), [reg. 2\(a\)](#) (with [reg. 3](#))

### Commencement Information

**I39** S. 99 in force at 1.10.2012 by [S.I. 2012/2234](#), [art. 3\(j\)](#)

## 100 Advisers

- (1) The Secretary of State may appoint persons to advise whether, in any case referred to them by the [<sup>F19</sup>Secretary of State—
  - (a) the caution or conviction is of a kind mentioned in section 92(1), or]
  - [<sup>F20</sup>(b)] the Secretary of State should decide as mentioned in condition A in [<sup>F21</sup>that section].

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (2) The Secretary of State may disclose to a person so appointed such information (including anything within section 94(1)(a) or (b)) as the Secretary of State considers relevant to the provision of such advice.
- (3) The Secretary of State may pay expenses and allowances to a person so appointed.

#### Textual Amendments

- F19** Words in s. 100(1) substituted (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(9\)\(a\)](#), 208(1) (with s. 194(11)); S.I. 2023/641, [reg. 2\(a\)](#) (with reg. 3)
- F20** Words in s. 100(1) renumbered as s. 100(1)(b) (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(9\)\(b\)](#), 208(1) (with s. 194(11)); S.I. 2023/641, [reg. 2\(a\)](#) (with reg. 3)
- F21** Words in s. 100(1)(b) substituted (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(9\)\(c\)](#), 208(1) (with s. 194(11)); S.I. 2023/641, [reg. 2\(a\)](#) (with reg. 3)

#### Commencement Information

- I40** S. 100 in force at 1.10.2012 by [S.I. 2012/2234](#), [art. 3\(k\)](#)

## 101 Interpretation: Chapter 4

(1) In this Chapter—

“caution” means—

- (a) a caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, that person has admitted, or
- (b) a reprimand or warning given under section 65 of the Crime and Disorder Act 1998 (reprimands and warnings for persons aged under 18),

“conviction” includes—

- (a) a finding that a person is guilty of an offence in respect of conduct which was the subject of service disciplinary proceedings [<sup>F22</sup>(including anything that under section 376(1) and (2) of the Armed Forces Act 2006 is to be treated as a conviction for the purposes of that Act)],
- (b) a conviction in respect of which an order has been made discharging the person concerned absolutely or conditionally, and
- (c) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that a person has committed an offence or done the act or made the omission charged,

“disregarded caution” is a caution which has become a disregarded caution by virtue of this Chapter,

“disregarded conviction” is a conviction which has become a disregarded conviction by virtue of this Chapter,

“document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include providing or producing a copy of the information in legible form,

[<sup>F23</sup>“enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978),]

“information” includes documents,

“notice” means notice in writing,

“official records” has the meaning given by section 95(5),

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

“sentence” includes—

- (a) any punishment awarded, and
- (b) any order made by virtue of Schedule 5A to the Army Act 1955, Schedule 5A to the Air Force Act 1955 or Schedule 4A to the Naval Discipline Act 1957,

in respect of a finding that a person is guilty of an offence in respect of conduct which was the subject of service disciplinary proceedings, [<sup>F24</sup> (including anything that under section 376(1) and (3) of the Armed Forces Act 2006 is to be treated as a sentence for the purposes of that Act),]

“service disciplinary proceedings” means any proceedings (whether in England and Wales or elsewhere)—

- (a) under the Naval Discipline Act 1866, the Army Act 1881, the Air Force Act 1917, the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under the enactment concerned to award a punishment in respect of an offence), <sup>F25</sup> ...
- (b) before a Standing Civilian Court established under the Armed Forces Act 1976 [<sup>F26</sup>, or
- (c) in respect of a service offence (whether or not before a court but excepting proceedings before a civilian court within the meaning of the Armed Forces Act 2006);

and for the purposes of paragraph (c) “service offence” means a service offence within the meaning of the Armed Forces Act 2006, or an SDA offence within the meaning of the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (SI 2009/1059).]

- (2) Paragraph (b) of the definition of “conviction” applies despite the following (which deem a conviction of a person discharged not to be a conviction)—
  - (a) section 14 of the Powers of Criminal Courts (Sentencing) Act 2000, and
  - (b) section 187 of the Armed Forces Act 2006 or any corresponding earlier enactment.

<sup>F27</sup>(3) .....

<sup>F28</sup>(4) .....

- (5) In this Chapter a reference to an offence includes [<sup>F29</sup>a reference to an inchoate or ancillary offence relating to the offence.]

- (6) In the case of an attempt, conspiracy [<sup>F30</sup>, incitement, encouraging or assisting], the references in this Chapter to the conduct constituting the offence are references to the conduct to which the attempt, conspiracy [<sup>F31</sup>, incitement, encouraging or assisting] related (whether or not that conduct occurred).

[<sup>F32</sup>(6A) For the purposes of section 92, an inchoate or ancillary offence is to be treated as repealed or abolished to the extent that the offence to which it relates is repealed or abolished.

- (6B) A reference to an inchoate or ancillary offence in relation to an offence is a reference to an offence of—
  - (a) attempting, conspiracy or incitement to commit the offence,
  - (b) encouraging or assisting the commission of the offence, or

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- (c) aiding, abetting, counselling or procuring the commission of the offence.
- (6C) For the purposes of section 92, an offence under an enactment mentioned in subsection (6D) is to be treated as repealed to the extent that the conduct constituting the offence under the enactment—
- (a) was punishable by reference to an offence under the law of England and Wales which has been repealed or abolished, or
  - (b) if the conduct was not punishable by the law of England and Wales, was punishable by reference to equivalent conduct constituting an offence under the law of England and Wales which has been repealed or abolished.
- (6D) The enactments are—
- (a) section 45 of the Naval Discipline Act 1866,
  - (b) section 41 of the Army Act 1881,
  - (c) section 41 of the Air Force Act 1917,
  - (d) section 70 of the Army Act 1955,
  - (e) section 70 of the Air Force Act 1955,
  - (f) section 42 of the Naval Discipline Act 1957, and
  - (g) section 42 of the Armed Forces Act 2006.]
- (7) For the purposes of subsections [F<sup>33</sup>(5), (6) and (6B)] an attempt to commit an offence includes conduct which—
- (a) consisted of frequenting with intent to commit the offence any river, canal, street, highway, place of public resort or other location mentioned in section 4 of the Vagrancy Act 1824 (as it then had effect) in connection with frequenting by suspected persons or reputed thieves, and
  - (b) was itself an offence under that section.

### Textual Amendments

- F22** Words in s. 101(1) inserted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. **194(10)(a)(i)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F23** Words in s. 101(1) inserted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. **194(10)(a)(v)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F24** Words in s. 101(1) inserted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. **194(10)(a)(ii)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F25** Word in s. 101(1) omitted (13.6.2023) by virtue of Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. **194(10)(a)(iii)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F26** Words in s. 101(1) inserted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. **194(10)(a)(iv)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F27** S. 101(3) omitted (13.6.2023) by virtue of Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. **194(10)(b)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F28** S. 101(4) omitted (13.6.2023) by virtue of Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. **194(10)(b)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F29** Words in s. 101(5) substituted for s. 101(5)(a)(b) (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. **194(10)(c)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F30** Words in s. 101(6) substituted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. **194(10)(d)(i)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F31** Words in s. 101(6) substituted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. **194(10)(d)(ii)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)
- F32** S. 101(6A)-(6D) inserted (13.6.2023) by Police, Crime, Sentencing and Courts Act 2022 (c. 32), ss. **194(10)(e)**, 208(1) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** *Protection of Freedoms Act 2012, Part 5 is up to date with all changes known to be in force on or before 12 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

**F33** Words in s. 101(7) substituted (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [ss. 194\(10\)\(f\), 208\(1\)](#) (with s. 194(11)); S.I. 2023/641, reg. 2(a) (with reg. 3)

**Modifications etc. (not altering text)**

**C27** S. 101 applied in part (with modifications) (31.1.2017) by [Policing and Crime Act 2017 \(c. 3\)](#), [ss. 164\(7\)-\(8A\), 183\(5\)\(b\)\(e\)](#) (with ss. 164(9), 167) (as amended (13.6.2023) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), [s. 195\(6\)-\(8\)\(13\)](#), 208(1) (with s. 195(14)); S.I. 2023/641, reg. 2(b))

**Commencement Information**

**I41** S. 101 in force at 1.10.2012 by [S.I. 2012/2234](#), [art. 3\(i\)](#)

[<sup>F34</sup>]**CHAPTER 5**

DISREGARDING CERTAIN CONVICTIONS FOR BUGGERY ETC: NORTHERN IRELAND

**Textual Amendments**

**F34** Pt. 5 Ch. 5 inserted (31.1.2017 for specified purposes, 28.6.2018) by [Policing and Crime Act 2017 \(c. 3\)](#), [ss. 168\(1\), 183\(4\)\(5\)\(e\)](#); S.R. 2018/128, art. 2(a)

**Modifications etc. (not altering text)**

**C28** Pt. 5 Ch. 5: power to amend conferred (N.I.) (31.1.2017 for specified purposes) by [Policing and Crime Act 2017 \(c. 3\)](#), [ss. 171, 183\(1\)\(5\)\(e\)](#) (with s. 172)

*General*

**101A Power of Department of Justice to disregard certain convictions or cautions**

- (1) A person who has in Northern Ireland been convicted of, or cautioned for, an offence under—
- (a) Article 19 of the Criminal Justice (Northern Ireland) Order 2003 ([S.I. 2003/1247 \(N.I. 13\)](#)) (buggery),
  - (b) Article 7 of the Homosexual Offences (Northern Ireland) Order 1982 ([S.I. 1982/1536 \(N.I. 19\)](#)) (procuring others to commit homosexual acts),
  - (c) section 61 of the Offences against the Person Act 1861 (buggery), or
  - (d) section 11 of the Criminal Law Amendment Act 1885 (indecent acts between men),
- may apply to the Department of Justice in Northern Ireland for the conviction or caution to become a disregarded conviction or caution.
- (2) A conviction or caution becomes a disregarded conviction or caution when conditions A and B are met.
- (3) In relation to an offence under Article 7 of the Homosexual Offences (Northern Ireland) Order 1982, Condition A is that the Department of Justice in Northern Ireland decides that it appears that—
- (a) the conduct procured was conduct involving persons who consented to it and were aged 17 or over (whether or not that conduct occurred), and



*Status: This version of this part contains provisions that are prospective.*

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- (b) the conduct procured would not now be an offence under Article 75 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)) (sexual activity in a public lavatory).
- (4) In relation to any other offence mentioned in subsection (1), Condition A is that the Department of Justice in Northern Ireland decides that it appears that—
- (a) the other person involved in the conduct constituting the offence consented to it and was aged 17 or over, and
  - (b) any such conduct now would not be an offence under Article 75 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)).
- (5) Condition B is that—
- (a) the Department of Justice in Northern Ireland has given notice of the decision to the applicant under section 101C(4)(b), and
  - (b) the period of 14 days beginning with the day on which the notice was given has ended.
- (6) Sections 101D to 101G explain the effect of a conviction or caution becoming a disregarded conviction or caution.

#### **Modifications etc. (not altering text)**

**C29** S. 101A: power to amend conferred (N.I.) (31.1.2017 for specified purposes) by [Policing and Crime Act 2017 \(c. 3\)](#), [ss. 171, 183\(1\)\(5\)\(e\)](#) (with [s. 172](#))

### **101B Applications to the Department of Justice**

- (1) An application under section 101A must be in writing.
- (2) It must state—
  - (a) the name, address and date of birth of the applicant,
  - (b) the name and address of the applicant at the time of the conviction or caution,
  - (c) so far as known to the applicant, the time when and the place where the conviction was made or the caution given and, for a conviction, the case number, and
  - (d) such other information as the Department of Justice in Northern Ireland may require.
- (3) It may include representations by the applicant or written evidence about the matters mentioned in condition A in section 101A.

### **101C Procedure for decisions by the Department of Justice**

- (1) In considering whether to make a decision of the kind mentioned in condition A in section 101A, the Department of Justice in Northern Ireland must, in particular, consider—
  - (a) any representations or evidence included in the application, and
  - (b) any available record of the investigation of the offence and of any proceedings relating to it that the Department of Justice in Northern Ireland considers to be relevant.

*Status: This version of this part contains provisions that are prospective.*

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- (2) The Department of Justice in Northern Ireland may not hold an oral hearing for the purpose of deciding whether to make a decision of the kind mentioned in condition A in section 101A.
- (3) Subsection (4) applies if the Department of Justice in Northern Ireland—
  - (a) decides that it appears as mentioned in condition A in section 101A, or
  - (b) makes a different decision in relation to the matters mentioned in that condition.
- (4) The Department of Justice in Northern Ireland must—
  - (a) record the decision in writing, and
  - (b) give notice of it to the applicant.

### *Effect of disregard*

#### **101D Effect of disregard on police and other records**

- (1) The Department of Justice in Northern Ireland must by notice direct the relevant data controller to delete details, contained in relevant official records, of a disregarded conviction or caution.
- (2) A notice under subsection (1) may be given at any time after condition A in section 101A is met but no deletion may have effect before condition B in that section is met.
- (3) Subject to that, the relevant data controller must delete the details as soon as reasonably practicable.
- (4) Having done so, the relevant data controller must give notice to the person who has the disregarded conviction or caution that the details of it have been deleted.
- (5) In this section—
  - “delete”, in relation to such relevant official records as may be prescribed, means record with the details of the conviction or caution concerned—
    - (a) the fact that it is a disregarded conviction or caution, and
    - (b) the effect of it being such a conviction or caution,
  - “the general names database” means the names database held by the Secretary of State for the use of constables,
  - “the Northern Ireland names database” means the names database maintained by the Department of Justice in Northern Ireland for the purpose of recording convictions and cautions,
  - “official records” means records containing information about persons convicted of, or cautioned for, offences and kept by any court, police force, government department or local or other public authority in Northern Ireland for the purposes of its functions,
  - “prescribed” means prescribed by order of the Department of Justice in Northern Ireland,
  - “relevant data controller” means—
    - (a) in relation to the general names database or the Northern Ireland names database, the Chief Constable of the Police Service of Northern Ireland,

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- (b) in relation to other relevant official records, such persons as may be prescribed,
  - “relevant official records” means—
  - (a) the general names database,
  - (b) the Northern Ireland names database, and
  - (c) such other official records as may be prescribed.
- (6) An order under this section may make different provision for different purposes.
- (7) Any power to make an order under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (8) A statutory rule containing an order under this section is subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I))).

#### **101E Effect of disregard for disclosure and other purposes**

- (1) A person who has a disregarded conviction or caution is to be treated for all purposes in law as if the person has not—
  - (a) committed the offence,
  - (b) been charged with, or prosecuted for, the offence,
  - (c) been convicted of the offence,
  - (d) been sentenced for the offence, or
  - (e) been cautioned for the offence.
- (2) In particular—
  - (a) no evidence is to be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in Northern Ireland to prove that the person has done, or undergone, anything within subsection (1)(a) to (e), and
  - (b) the person is not, in any such proceedings, to be asked (and, if asked, is not to be required to answer) any question relating to the person’s past which cannot be answered without acknowledging or referring to the conviction or caution or any circumstances ancillary to it.
- (3) Where a question is put to a person, other than in such proceedings, seeking information with respect to the previous convictions, cautions, offences, conduct or circumstances of any person—
  - (a) the question is to be treated as not relating to any disregarded conviction or caution, or any circumstances ancillary to it (and the answer to the question may be framed accordingly), and
  - (b) the person questioned is not to be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose that conviction or caution or any circumstances ancillary to it in answering the question.
- (4) Any obligation imposed on any person by any enactment or rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person is not to extend to requiring the disclosure of a disregarded conviction or caution or any circumstances ancillary to it.

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- (5) A disregarded conviction or caution, or any circumstances ancillary to it, is not a proper ground for—
- (a) dismissing or excluding a person from any office, profession, occupation or employment, or
  - (b) prejudicing the person in any way in any office, profession, occupation or employment.
- (6) This section is subject to section 101F but otherwise applies despite any enactment or rule of law to the contrary.
- (7) See also section 101G (meaning of “proceedings before a judicial authority” and “circumstances ancillary to a conviction or caution”).

#### **101F Saving for Royal pardons etc**

Nothing in section 101E affects any right of Her Majesty, by virtue of Her Royal prerogative or otherwise, to grant a free pardon, to quash any conviction or sentence, or to commute any sentence.

#### **101G Section 101E: supplementary**

- (1) In section 101E, “proceedings before a judicial authority” includes (in addition to proceedings before any of the ordinary courts of law) proceedings before any tribunal, body or person having power—
- (a) by virtue of any enactment, law, custom or practice,
  - (b) under the rules governing any association, institution, profession, occupation or employment, or
  - (c) under any provision of an agreement providing for arbitration with respect to questions arising under that agreement,
- to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.
- (2) For the purposes of section 101E, circumstances ancillary to a conviction are any circumstances of—
- (a) the offence which was the subject of the conviction;
  - (b) the conduct constituting the offence;
  - (c) any process or proceedings preliminary to the conviction;
  - (d) any sentence imposed in respect of the conviction;
  - (e) any proceedings (whether by appeal or otherwise) for reviewing the conviction or any such sentence;
  - (f) anything done in pursuance of, or undergone in compliance with, any such sentence.
- (3) For the purposes of section 101E, circumstances ancillary to a caution are any circumstances of—
- (a) the offence which was the subject of the caution;
  - (b) the conduct constituting the offence;
  - (c) any process preliminary to the caution (including consideration by any person of how to deal with the offence and the procedure for giving the caution);
  - (d) any proceedings for the offence which take place before the caution is given;

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- (e) anything which happens after the caution is given for the purposes of bringing any such proceedings to an end;
- (f) any judicial review proceedings relating to the caution.

#### *Appeals and other supplementary provision*

### **101H Appeal against refusal to disregard convictions or caution**

- (1) The applicant may appeal to the High Court in Northern Ireland if—
  - (a) the Department of Justice in Northern Ireland makes a decision of the kind mentioned in section 101C(3)(b), and
  - (b) the High Court gives permission for an appeal against the decision.
- (2) On such an appeal, the High Court must make its decision only on the basis of the evidence that was available to the Department of Justice in Northern Ireland.
- (3) If the High Court decides that it appears as mentioned in condition A in section 101A, it must make an order to that effect.
- (4) Otherwise, it must dismiss the appeal.
- (5) A conviction or caution to which an order under subsection (3) relates becomes a disregarded conviction or caution when the period of 14 days beginning with the day on which the order was made has ended.
- (6) There is no appeal from a decision of the High Court under this section.

### **101I Advisers**

- (1) The Department of Justice in Northern Ireland may appoint persons to advise whether, in any case referred to them by the Department of Justice in Northern Ireland, the Department of Justice in Northern Ireland should decide as mentioned in condition A in section 101A.
- (2) The Department of Justice in Northern Ireland may disclose to a person so appointed such information (including anything within section 101C(1)(a) or (b)) as the Department of Justice considers relevant to the provision of such advice.
- (3) The Department of Justice in Northern Ireland may pay expenses and allowances to a person so appointed.

### **101J Interpretation: Chapter 5**

- (1) In this Chapter—
  - “caution” means a caution or a warning given to a person in Northern Ireland in respect of an offence which, at the time the caution or warning is given, that person has admitted,
  - “conviction” includes—
    - (a) a conviction in respect of which an order has been made discharging the person concerned absolutely or conditionally, and
    - (b) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that a person has committed an offence or done the act or made the omission charged,

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“disregarded caution” is a caution which has become a disregarded caution by virtue of this Chapter,

“disregarded conviction” is a conviction which has become a disregarded conviction by virtue of this Chapter,

“document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include providing or producing a copy of the information in legible form,

“information” includes documents,

“notice” means notice in writing,

“official records” has the meaning given by section 101D(5).

- (2) Paragraph (a) of the definition of “conviction” applies despite Article 6 of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)) (which deems a conviction of a person discharged not to be a conviction).
- (3) In this Chapter, a reference to an offence includes—
- (a) a reference to an attempt, conspiracy or incitement to commit that offence, and
  - (b) a reference to aiding, abetting, counselling or procuring the commission of that offence.
- (4) In the case of an attempt, conspiracy or incitement, the references in this Chapter to the conduct constituting the offence are references to the conduct to which the attempt, conspiracy or incitement related (whether or not that conduct occurred).
- (5) For the purposes of subsections (3) and (4) an attempt to commit an offence includes conduct which—
- (a) consisted of frequenting with intent to commit the offence any river, canal, street, highway, place of public resort or other location mentioned in section 4 of the Vagrancy Act 1824 (as it then had effect) in connection with frequenting by suspected persons or reputed thieves, and
  - (b) was itself an offence under that section.]

**Modifications etc. (not altering text)**

**C30** S. 101J(1) applied (31.1.2017 for specified purposes, 28.6.2018) by [Policing and Crime Act 2017](#) (c. 3), ss. 169(5)(a), 183(4)(5)(e) (with s. 172); S.R. 2018/128, art. 2(b)

**C31** Ss. 101J(2)-(5) applied (31.1.2017 for specified purposes, 28.6.2018) by [Policing and Crime Act 2017](#) (c. 3), ss. 169(5)(b), 183(4)(5)(e) (with s. 172); S.R. 2018/128, art. 2(b)

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2012/2234 art. 13 by [S.I. 2014/831 art. 2\(2\)](#)
- specified provision(s) transitional provisions and savings for commencing S.I. 2013/1814 by [S.I. 2013/1813 art. 2-9](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 1 para. 7A inserted by [2019 c. 3 Sch. 2 para. 20](#)