

SAFEGUARDING VULNERABLE GROUPS (NORTHERN IRELAND) ORDER 2007

S.I. 2007 1351

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the Order”) was made on 2 May 2007. This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety (“the Department”) in order to assist the reader in understanding the Order. It does not form part of the Order.
2. The Memorandum needs to be read in conjunction with the Order. It does not, and is not meant to be, a comprehensive description of the Order. So where an article or part of an article or schedule does not seem to require an explanation or comment, none is given.
3. The Safeguarding Vulnerable Groups Act 2006 extends to England and Wales with certain provisions in the Act extending to Northern Ireland. The Order replicates the provisions of the Safeguarding Vulnerable Groups Act 2006 which do not extend to Northern Ireland.

BACKGROUND AND POLICY OBJECTIVES

4. The current system for vetting people who wish to work with children or vulnerable adults operates through employers obtaining a check on prospective employee’s criminal records. This check also includes information about the individual’s suitability to work with children or vulnerable adults.
5. There are also three separate lists of persons who are barred from working with children or vulnerable adults. These lists operate under different legislation: the Disqualification from Working with Children (Northern Ireland) List and the Disqualification from Working with Vulnerable Adults (Northern Ireland) List (maintained under the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 and the Unsuitable Persons List (maintained under The Education and Libraries (Northern Ireland) Order 1986. Disqualification orders made by a Court also bar individuals from working with children.
6. The Bichard Inquiry Report (June 2004), available from <http://www.bichardinquiry.org.uk/>, identified systemic failures in current vetting and barring systems. These included the following factors:
 - Inconsistent decisions were being made by employers on the basis of information supplied with a criminal record check
 - The criminal record information is only valid on the day of issue
 - There are inconsistencies between the Disqualification from Working with Children (Northern Ireland) List, the Disqualification from Working with Vulnerable Adults (Northern Ireland) List and the Unsuitable People List
 - The current barring system is reactive to harmful behaviour rather than preventative

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7. This Order provides the legislative framework for a new vetting and barring scheme for people who work with children and vulnerable adults. The purpose of the new scheme is to minimise the risk of harm posed to children and vulnerable adults by those that might seek to harm them through their work (paid or unpaid). It seeks to do this by barring unsuitable individuals not just on the basis of referrals but also at the earliest possible opportunity as part of a centralised vetting process that all those working closely with children and/or vulnerable adults will need to go through. These arrangements will enable vetting and barring processes to operate coherently across the UK.

CONSULTATION

8. In April 2005 England and Wales consulted on proposals for the new vetting and barring scheme. On the 15th January 2007 Northern Ireland issued for a limited consultation the Safeguarding Vulnerable Groups Act 2006 welcoming any views about the implementation of arrangements in the Act to Northern Ireland. The consultation closed on the 16th February 2007. In the main, those who responded supported the new vetting and barring scheme.

MAIN ELEMENTS OF THE ORDER

9. The Order provides that:
 - There will be two aligned barred lists – one for those who are barred from working with children (the “children’s barred list”), and one for those who are barred from working with vulnerable adults (the “adults’ barred list”).
 - The Independent Barring Board (“the IBB”) established by the Safeguarding Vulnerable Groups Act 2006 will maintain the children’s barred list and the adults’ barred list and will make decisions about whether an individual should be included in one or both barred lists.
 - There will be a right of appeal to the Care Tribunal against inclusion in a barred list, with the permission of the tribunal, on a point of law or on a finding of fact made by the IBB.
10. There will be four routes to inclusion on one or both of the barred lists:
 - Automatic inclusion on one or both of the barred lists as a result of receiving a caution or conviction for specified offences. The individual will not have a right to make representation or a right of appeal in these cases.
 - Automatic inclusion on one or both of the barred lists for certain specified offences. There will be a right to make representations and a right of appeal following inclusion.
 - Specified behaviour (the term “relevant conduct” is used in the Order) that leads to consideration for inclusion on one or both of the barred lists’. This includes, for example, conduct which harms a child in the case of the children’s barred list, or conduct which harms a vulnerable adult in the case of the adults’ barred list.
 - Risk of harm: where evidence suggests that an individual may present a risk of harm to children or vulnerable adults, this will lead to consideration for inclusion on one or both of the barred lists.
11. An individual who is included in the children’s barred list must not engage in regulated activity in relation to children. An individual who is included in the adults’ barred list must not engage in regulated activity in relation to vulnerable adults.
12. Broadly, regulated activity will cover a range of specified activities that provide an opportunity for certain close contact with children or vulnerable adults.
13. There will be a series of criminal offences to:
 - Prevent barred individuals from engaging in regulated activity in relation to children or vulnerable adults

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- Ensure that people permitted to engage in regulated activity in relation to children or vulnerable adults with the permission of a “regulated activity provider” are subject to monitoring
 - Ensure that relevant employers check whether an individual is barred or is subject to monitoring before engaging an individual in a regulated activity in relation to children or vulnerable adults
14. To become subject to monitoring an individual will need to make an application to the Secretary of State.

COMMENTARY ON ARTICLES

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

Article 5: The Independent Barring Board

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

Article 6: Barred Lists

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

Schedule 1: Barred Lists

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

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

Article 7: Barred Persons

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

Article 8: Appeals

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

Article 9: Regulated Activity

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

Schedule 2: Regulated Activity

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

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

Article 10: Regulated Activity Providers

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

Article 11: Barred person not to engage in regulated activity

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

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

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

Article 13: Use of barred person for regulated activity

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

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

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

Article 15: Regulated provider: failure to check

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

Schedule 3: Appropriate verification

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

Article 16: Personnel suppliers: failure to check

Article 16 refers to Schedule 4.

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

Schedule 4: Employment Businesses: failure to check

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

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

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

Article 18: Office holders: offences

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

Article 20: Exception to requirement to make monitoring check

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

Article 21: Employment by HSS Body

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

Article 22 and 23: Offences

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

Article 25: Controlled activity relating to children

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

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

Article 26: Controlled activity relating to vulnerable adults

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

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

Article 27: Controlled activity: regulations

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

Article 28: Monitoring

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

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

Article 29: Monitoring fees

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

Article 31: Prohibition of requirement to produce certain records

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

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

Article 32: Provision of vetting information

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

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

Schedule 5: Vetting information

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

Article 33: Meaning of relevant information in Article 32

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

Article 34: Notification of cessation of monitoring

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

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

Article 35: Cessation of registration

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

Article 36: Declarations under articles 32 and 34

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

Article 37: Regulated activity providers: duty to refer

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

Article 38: Personnel suppliers: duty to refer

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

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

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

Article 40: Duty to provide information: offences

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

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

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

Articles 43 to 46: Registers

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

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

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

Articles 47 to 52: Supervisory Authorities

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

Article 53: Crown application

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

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

Article 55: Fostering

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

Article 56: Alignment with the rest of the UK

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

Article 59: Transitional provisions

Article 59 gives effect to Schedule 6.

Schedule 6: Transitional provisions

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

COMMENCEMENT

16. **Articles 1, 2 to 4, 58 and 61** come into operation one week after the day on which this Order is made.
17. The other provisions of this Order come into operation on such day or days as the Secretary of State may by order appoint.