

**2007 No.1351 (N.I. 11)**

**NORTHERN IRELAND**

**The Safeguarding Vulnerable Groups (Northern Ireland)  
Order 2007**

*Made* - - - - *2nd May 2007*

*Laid* - - - - *9th May 2007*

*Coming into operation in accordance with Article 1(2) and (3)*

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At the Court at Buckingham Palace, the 2nd day of May 2007

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order in Council is made only for purposes corresponding to those of the Safeguarding Vulnerable Groups Act 2006 (c.47):

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c.1) (as modified by section 55 of the said Act of 2006) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

*Title and commencement*

**Title and commencement**

1.—(1) This Order may be cited as the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

(2) This Article and Articles 2 to 4, 58 and 61 come into operation two weeks after the day on which this Order is made.

(3) The other provisions of this Order come into operation on such day or days as the Secretary of State may by order appoint.

*Interpretation*

**Interpretation**

2.—(1) Subject to Article 22(1), the Interpretation Act (Northern Ireland) 1954 (c.33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“the 1972 Order” means the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14);

“the 2003 Order” means the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (NI 9);

“the adults’ barred list” must be construed in accordance with Article 6(1)(b);

“barred list” means the children’s barred list or the adults’ barred list;

“child” means a person who has not attained the age of 18;

“the Children Order” means the Children (Northern Ireland) Order 1995 (NI 2);

“the children’s barred list” must be construed in accordance with Article 6(1)(a);

“employment agency” and “employment business” must be construed in accordance with Part II of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (NI 20);

“HSS body” means any of the following within the meaning of the 1972 Order—

- (a) a Health and Social Services Board,
- (b) a Health and Social Services trust;
- (c) a special health and social services agency;

“IBB” must be construed in accordance with Article 5;

“institution of further education” has the same meaning as in the Further Education (Northern Ireland) Order 1997 (NI 15);

“personal social services” has the same meaning as in the 1972 Order;

“personnel supplier” means—

- (a) a person carrying on an employment agency or an employment business, or
- (b) an educational institution which supplies to another person a student who is following a course at the institution, for the purpose of enabling the student to obtain experience of engaging in regulated or controlled activity;

“prescribed” means prescribed by regulations made by the Secretary of State;

“the Regulation and Improvement Authority” means the Northern Ireland Health and Personal Social Services Regulation and Improvement Authority;

“statutory provision” must be construed in accordance with section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c,33);

“supervisory authority” must be construed in accordance with Article 47(7);

“vulnerable adult” must be construed in accordance with Article 3.

(2) A reference (however expressed) to a person being barred must be construed in accordance with Article 7.

(3) A reference to a person being subject to monitoring in relation to a regulated activity must be construed in accordance with Article 28.

(4) Nothing in this Order affects any power to provide information which exists apart from this Order.

### **Vulnerable adults**

**3.—**(1) A person is a vulnerable adult if he has attained the age of 18 and—

- (a) he is in residential accommodation,
- (b) he is in sheltered housing,
- (c) he receives domiciliary care,
- (d) he receives any form of health care,
- (e) he is detained in lawful custody,
- (f) he is by virtue of an order of a court under supervision by a probation officer,

- (g) he receives a welfare service of a prescribed description,
  - (h) he receives any service or participates in any activity provided specifically for persons who fall within paragraph (9),
  - (i) payments are made to him (or to another on his behalf) in pursuance of arrangements under section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002 (c.6), or
  - (j) he requires assistance in the conduct of his own affairs.
- (2) Residential accommodation is accommodation provided for a person—
- (a) in connection with any care or nursing he requires, or
  - (b) who is or has been a pupil attending a residential special school.
- (3) A residential special school is a school which provides residential accommodation for its pupils and which is—
- (a) a special school within the meaning of Article 3(5) of the Education (Northern Ireland) Order 1996 (NI 1);
  - (b) an independent school which is approved by the Department of Education in accordance with Article 26 of that Order; or
  - (c) an institution of further education which provides accommodation for children.
- (4) Domiciliary care is care of any description or assistance falling within paragraph (5) whether provided continuously or not which a person receives in a place where he is, for the time being, living.
- (5) Assistance falls within this paragraph if it is (to any extent) provided to a person by reason of—
- (a) his age;
  - (b) his health;
  - (c) any disability he has.
- (6) Health care includes treatment, therapy or palliative care of any description.
- (7) A person is in lawful custody if he is—
- (a) detained in a prison, remand centre or young offenders centre;
  - (b) a detained person (within the meaning of Part 8 of the Immigration and Asylum Act 1999 (c. 33)) who is detained in a removal centre or short-term holding facility (within the meaning of that Part) or in pursuance of escort arrangements made under section 156 of that Act.
- (8) The reference to a welfare service must be construed in accordance with Article 20(5).
- (9) A person falls within this paragraph if—
- (a) he has particular needs because of his age;
  - (b) he has any form of disability;
  - (c) he has a physical or mental problem of such description as is prescribed;
  - (d) she is an expectant or nursing mother in receipt of care under Article 8 of the 1972 Order;
  - (e) he is a person of a prescribed description not falling within subparagraphs (a) to (d).

- (10) A person requires assistance in the conduct of his own affairs if—
- (a) an enduring power of attorney (within the meaning of the Enduring Powers of Attorney (Northern Ireland) Order 1987 (NI 16) in respect of him is registered in accordance with that Order or an application is made under that Order for the registration of an enduring power of attorney in respect of him;
  - (b) an order under Article 99 or 101 of the Mental Health (Northern Ireland) Order 1986 (NI 4) has been made by the High Court in relation to him or his property or affairs, or such an order has been applied for;
  - (c) a representative is or is to be appointed to receive payments on his behalf in pursuance of regulations made under the Social Security Administration (Northern Ireland) Act 1992 (c. 8).

(11) The Secretary of State may by order provide that a person specified in the order or of a description so specified who falls within paragraph (1) is not to be treated as a vulnerable adult.

### **Family and personal relationships**

**4.—**(1) This Order does not apply to any activity which is carried out in the course of a family relationship.

(2) This Order does not apply to any activity which is carried out—

- (a) in the course of a personal relationship, and
- (b) for no commercial consideration.

(3) A family relationship includes a relationship between two persons who—

- (a) live in the same household, and
- (b) treat each other as though they were members of the same family.

(4) A personal relationship is a relationship between or among friends.

(5) A friend of a person (A) includes a person who is a friend of a member of A's family.

(6) The Secretary of State may by order provide that an activity carried out in specified circumstances either is or is not—

- (a) carried out in the course of a family relationship;
- (b) carried out in the course of a personal relationship.

### *Barring*

### **The Independent Barring Board**

**5.** In this Order references to IBB are references to the Independent Barring Board established by section 1 of the Safeguarding Vulnerable Groups Act 2006 (c. 47).

### **Barred lists**

**6.—**(1) IBB must establish and maintain—

- (a) the children's barred list;
- (b) the adults' barred list.

(2) Part I of Schedule 1 applies for the purpose of determining whether an individual is included in the children's barred list.

(3) Part II of that Schedule applies for the purpose of determining whether an individual is included in the adults' barred list.

(4) Part III of that Schedule contains supplementary provision.

(5) In respect of an individual who is included in a barred list, IBB must keep other information of such description as is prescribed.

### **Barred persons**

7.—(1) A reference to a person being barred from regulated activity must be construed in accordance with this Article.

(2) A person is barred from regulated activity relating to children if he is—

(a) included in the children's barred list; or

(b) included in a list maintained under the law of England and Wales or Scotland which the Secretary of State specifies by order as corresponding to the children's barred list.

(3) A person is barred from regulated activity relating to vulnerable adults if he is—

(a) included in the adults' barred list; or

(b) included in a list maintained under the law of England and Wales or Scotland which the Secretary of State specifies by order as corresponding to the adults' barred list.

### **Appeals**

8.—(1) An individual who is included in a barred list may appeal to the Care Tribunal against—

(a) a decision under paragraph 2 or 8 of Schedule 1 not to remove him from the list;

(b) a decision under paragraph 3, 5, 9 or 11 of that Schedule to include him in the list;

(c) a decision under paragraph 17 or 18 of that Schedule not to remove him from the list.

(2) An appeal under paragraph (1) may be made only on the grounds that IBB has made a mistake—

(a) on any point of law;

(b) in any finding of fact which it has made and on which the decision mentioned in that paragraph was based.

(3) For the purposes of paragraph (2), the decision whether or not it is appropriate for an individual to be included in a barred list is not a question of law or fact.

(4) An appeal under paragraph (1) may be made only with the leave of the Care Tribunal.

(5) Unless the Care Tribunal finds that IBB has made a mistake of law or fact, it must confirm the decision of IBB.



- (6) If the Care Tribunal finds that IBB has made such a mistake it must—
- (a) direct IBB to remove the person from the list, or
  - (b) remit the matter to IBB for a new decision.
- (7) If the Care Tribunal remits a matter to IBB under paragraph (6)(b)—
- (a) the Care Tribunal may set out any findings of fact which it has made (on which IBB must base its new decision); and
  - (b) the person must be removed from the list until IBB makes its new decision, unless the Care Tribunal directs otherwise.
- (8) In this Article “the Care Tribunal” means the Tribunal established under Article 44 of the 2003 Order.

### *Regulated activity*

#### **Regulated activity**

**9.**—(1) A reference to regulated activity relating to children must be construed in accordance with Part I of Schedule 2.

(2) A reference to regulated activity relating to vulnerable adults must be construed in accordance with Part II of that Schedule.

(3) The Secretary of State may by order amend that Schedule, or any of the modifications of that Schedule in the provisions mentioned in paragraph (4), so as to vary the meaning of—

- (a) regulated activity relating to children;
- (b) regulated activity relating to vulnerable adults.

(4) The provisions are—

- (a) Article 11(5),
- (b) Article 13(5),
- (c) Article 14(3),
- (d) Article 23(8),
- (e) paragraph 4 of Schedule 4.

### *Regulated activity providers*

#### **Regulated activity providers**

**10.**—(1) A reference to a regulated activity provider must be construed in accordance with this Article.

(2) A person (P) is a regulated activity provider if—

- (a) he is responsible for the management or control of regulated activity,
- (b) if the regulated activity is carried out for the purposes of an organisation, his exercise of that responsibility is not subject to supervision or direction by any other person for those purposes, and
- (c) he makes, or authorises the making of, arrangements (whether in connection with a contract of service or for services or otherwise) for another person to engage in that activity.

(3) A person (P) is also a regulated activity provider if Article 55(4) (fostering) so provides.

(4) A person (P) is also a regulated activity provider if he carries on a scheme—

- (a) under which an individual agrees with P to provide care or support (which may include accommodation) to an adult who is in need of it, and
- (b) in respect of which a requirement to register arises under Article 12 of the 2003 Order.

(5) P is not a regulated activity provider if he is an individual and the arrangements he makes are private arrangements.

(6) Arrangements are private arrangements if the regulated activity is for, or for the benefit of, P himself.

(7) Arrangements are private arrangements if the regulated activity is for, or for the benefit of, a child or vulnerable adult who is—

- (a) a member of P's family;
- (b) a friend of P.

(8) A person does not make arrangements for another to engage in a regulated activity merely because he (alone or together with others) appoints that person—

- (a) to a position mentioned in paragraph 4(1)(a), (b), (c), (g), (h) or (i) or 8(1)(a) or (d) of Schedule 2,
- (b) as a controller under Article 101 of the Mental Health (Northern Ireland) Order 1986 (NI 4);
- (c) as member or chief executive of IBB;
- (d) to any position mentioned in sub-paragraph (a) or (c) of Article 3(10) or to exercise any function mentioned in that paragraph.

(9) For the purposes of paragraph (7) it is immaterial whether P is also acting in any capacity other than as a family member or friend.

(10) If a regulated activity provider is an unincorporated association any requirement of or liability (including criminal liability) under this Order must be taken to be a requirement on or liability of—

- (a) the person responsible for the management and control of the association, or
- (b) if there is more than one such person, all of them jointly and severally.

(11) “Family” and “friend” must be construed in accordance with Article 4.

(12) The Secretary of State may by order provide that in specified circumstances a person who makes, or authorises the making of, arrangements (of any description) for another to engage in regulated activity either is or is not a regulated activity provider.

#### *Restrictions on participating in regulated activity*

#### **Barred person not to engage in regulated activity**

**11.—**(1) An individual commits an offence if he—

- (a) seeks to engage in regulated activity from which he is barred;

- (b) offers to engage in regulated activity from which he is barred;
  - (c) engages in regulated activity from which he is barred.
- (2) A person guilty of an offence under paragraph (1) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.
- (3) It is a defence for a person charged with an offence under paragraph (1) to prove that he did not know, and could not reasonably be expected to know, that he was barred from that activity.
- (4) It is a defence for a person charged with an offence under paragraph (1) to prove—
- (a) that he reasonably thought that it was necessary for him to engage in the activity for the purpose of preventing harm to a child or vulnerable adult (as the case may be),
  - (b) that he reasonably thought that there was no other person who could engage in the activity for that purpose, and
  - (c) that he engaged in the activity for no longer than was necessary for that purpose.
- (5) For the purposes of this Article, Schedule 2 is modified as follows—
- (a) in paragraph 1, sub-paragraphs (1)(b) and (2)(a) must be disregarded;
  - (b) in paragraph 7(1), the words “if it is carried out frequently by the same person or the period condition is satisfied” must be disregarded;
  - (c) in paragraph 7(4), paragraph (a) must be disregarded.

**Person not to engage in regulated activity unless subject to monitoring**

- 12.—**(1) An individual commits an offence if—
- (a) he engages in regulated activity with the permission of a regulated activity provider, and
  - (b) he is not subject to monitoring in relation to that activity.
- (2) An individual commits an offence if—
- (a) he engages in an activity which is a regulated activity by virtue of paragraph 1(3) of Schedule 2, and
  - (b) he is not subject to monitoring in relation to regulated activity relating to children.
- (3) An individual commits an offence if—
- (a) he acts as a member of the governing body of an educational establishment mentioned in paragraph (5), and
  - (b) he is not subject to monitoring in relation to regulated activity relating to children.
- (4) A person guilty of an offence under paragraph (1), (2) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) The establishments are—

- (a) an educational institution which is exclusively or mainly for the provision of full-time education to children;
  - (b) a nursery school within the meaning of the Education and Libraries (Northern Ireland) Order 1986 (NI 3).
- (6) A person does not commit an offence under paragraph (1) or (2) if he has not attained the age of 16.
- (7) A person does not commit an offence under paragraph (1) if, in relation to any continuous period for which he is permitted to engage in the activity—
- (a) the permission is first given before the commencement of this Article, and
  - (b) it continues to have effect after such commencement.
- (8) Where paragraph (7) applies to a person who is engaged in regulated activity which is relevant HSS employment for the purposes of Article 21(1)(d), he does not commit an offence under paragraph (1) if he also engages in any other such regulated activity as mentioned in Article 21.
- (9) Paragraph (7) does not apply in respect of permission which continues to have effect after such date as the Secretary of State specifies by order.
- (10) A person does not commit an offence under paragraph (1) if the regulated activity—
- (a) is regulated activity relating to vulnerable adults, and
  - (b) falls within Article 20.
- (11) A person does not commit an offence under paragraph (3) if, in relation to any continuous period for which he acts as a governor—
- (a) his appointment as a governor first took effect before the commencement of this Article, and
  - (b) it continues to have effect after such commencement.
- (12) Paragraph (11) does not apply in respect of an appointment which continues to have effect after such date as the Secretary of State specifies by order.
- (13) It is a defence for a person charged with an offence under paragraph (1), (2) or (3) to prove that he did not know, and could not reasonably be expected to know, that he was not subject to monitoring in relation to the activity.
- (14) In determining what is the appropriate sentence to pass in respect of a person who is convicted of an offence under this Article in a case where the regulated activity falls within paragraph 1(1) or (2) or 7(1) or (4) of Schedule 2 the court must consider the extent to which the offender had regard to any guidance issued by the Secretary of State as to the circumstances in which an activity is carried out frequently.

### **Use of barred person for regulated activity**

- 13.—**(1) A person commits an offence if—
- (a) he permits an individual (B) to engage in regulated activity from which B is barred,
  - (b) he knows or has reason to believe that B is barred from that activity; and
  - (c) B engages in that activity.

- (2) A personnel supplier commits an offence if—
  - (a) he supplies an individual (B) to another (P),
  - (b) he knows or has reason to believe that P will make arrangements for B to engage in regulated activity from which B is barred, and
  - (c) he knows or has reason to believe that B is barred from that activity.
- (3) A person guilty of an offence under this Article is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.
- (4) It is a defence for a person charged with an offence under this Article to prove—
  - (a) that he reasonably thought that it was necessary for the barred person to engage in the activity for the purpose of preventing harm to a child or vulnerable adult (as the case may be),
  - (b) that he reasonably thought that there was no other person who could engage in the activity for that purpose, and
  - (c) that the barred person engaged in the activity for no longer than was necessary for that purpose.
- (5) For the purposes of this Article, Schedule 2 is modified as follows—
  - (a) in paragraph 1, sub-paragraphs (1)(b) and (2)(a) must be disregarded;
  - (b) in paragraph 7(1), the words “if it is carried out frequently by the same person or the period condition is satisfied” must be disregarded;
  - (c) in paragraph 7(4), paragraph (a) must be disregarded.

#### **Use of person not subject to monitoring for regulated activity**

- 14.—**(1) A regulated activity provider commits an offence if—
- (a) he permits an individual (B) to engage in regulated activity in relation to which B is not subject to monitoring,
  - (b) he knows or has reason to believe that B is not subject to monitoring in relation to that activity, and
  - (c) B engages in that activity.
- (2) A personnel supplier commits an offence if—
- (a) he supplies an individual (B) to another (P),
  - (b) he knows or has reason to believe that P will make arrangements for B to engage in regulated activity in relation to which B is not subject to monitoring, and
  - (c) he knows or has reason to believe that B is not subject to monitoring in relation that activity.
- (3) For the purposes of paragraph (2)(b), Schedule 2 is modified as follows—
- (a) in paragraph 1, sub-paragraphs (1)(b) and (2)(a) must be disregarded;
  - (b) in paragraph 7(1), the words “if it is carried out frequently by the same person or the period condition is satisfied” must be disregarded;

(c) in paragraph 7(4), paragraph (a) must be disregarded.

(4) A person guilty of an offence under paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person does not commit an offence under paragraph (1) or (2) if he has not attained the age of 16.

(6) A person does not commit an offence under paragraph (1) if, in relation to any continuous period for which B is permitted to engage in the regulated activity—

- (a) the permission is first given before the commencement of this Article, and
- (b) it continues to have effect after such commencement.

(7) A person does not commit an offence under paragraph (1) if—

- (a) he falls within Article 21,
- (b) the permission mentioned in paragraph (1) commences at a time when B is engaged in relevant HSS employment mentioned in Article 21(1)(b) in circumstances mentioned in paragraph (6), and
- (c) for the duration of the permission mentioned in paragraph (1), B continues to be engaged in that relevant HSS employment.

(8) Paragraph (6) or (7) does not apply in respect of permission which continues to have effect after such date as the Secretary of State specifies by order.

(9) A person does not commit an offence under paragraph (1) or (2) if the regulated activity—

- (a) is regulated activity relating to vulnerable adults, and
- (b) falls within Article 20.

(10) In determining what is the appropriate sentence to pass in respect of a person who is convicted of an offence under this Article in a case where the regulated activity falls within paragraph 1(1) or (2) or 7(1) or (4) of Schedule 2 the court must consider the extent to which the offender had regard to any guidance issued by the Secretary of State as to the circumstances in which an activity is carried out frequently.

(11) A person is not guilty of an offence by virtue of paragraph (2) in relation to any period during which B is continuously supplied to another if the period begins before the commencement of this Article.

(12) Paragraph (11) does not have effect in respect of permission which continues to have effect after such date as the Secretary of State specifies by order.

#### **Regulated activity provider: failure to check**

**15.—**(1) A regulated activity provider commits an offence if—

- (a) he permits an individual (B) to engage in regulated activity,
- (b) B engages in the activity, and
- (c) he fails to ascertain whether B is subject to monitoring in relation to the activity.

(2) A regulated activity provider ascertains whether B is subject to monitoring only if—

- (a) he obtains an appropriate verification in accordance with Part I of Schedule 3 and neither of Parts II and III of that Schedule is prescribed in relation to him,
- (b) he obtains an appropriate verification in accordance with Part II of that Schedule and that Part is prescribed in relation to him, or
- (c) he obtains an appropriate verification in accordance with Part III of that Schedule and that Part is prescribed in relation to him.

(3) A person does not commit an offence under paragraph (1) if the regulated activity—

- (a) is regulated activity relating to vulnerable adults, and
- (b) falls within Article 20.

(4) A person does not commit an offence under paragraph (1) if he falls within Article 21.

(5) A person does not commit an offence under paragraph (1) if B has not attained the age of 16.

(6) A person does not commit an offence under paragraph (1) if, in relation to any continuous period for which B is permitted to engage in the regulated activity—

- (a) the permission is first given before the commencement of this section, and
- (b) it continues to have effect after such commencement.

(7) Paragraph (6) does not apply in respect of permission which continues to have effect after such date as the Secretary of State specifies by order.

(8) A person commits an offence if—

- (a) he provides written confirmation under Schedule 3 that is false in any material respect, and
- (b) he either knows that it is false or is reckless as to whether it is false.

(9) A person guilty of an offence under paragraph (1) or (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) In determining what is the appropriate sentence to pass in respect of a person who is convicted of an offence under this Article in a case where the regulated activity falls within paragraph 1(1) or (2) or 7(1) or (4) of Schedule 2 the court must consider the extent to which the offender had regard to any guidance issued by the Secretary of State as to the circumstances in which an activity is carried out frequently.

#### **Personnel suppliers: failure to check**

**16.—**(1) Schedule 4 (employment businesses: failure to check) has effect.

(2) The Secretary of State may by order make provision (including provision amending this Order) corresponding to Schedule 4 in relation to the supply of persons by a personnel supplier otherwise than in the course of carrying on an employment business.

### **Educational establishments: check on members of governing body**

17.—(1) The appropriate officer (P) commits an offence if he fails in the prescribed period to make a check in accordance with Article 19 relating to any person (B) who is appointed to the governing body of an educational establishment mentioned in Article 12(5).

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A person does not commit an offence under paragraph (1) if, in relation to any continuous period for which B is a member of the governing body of the establishment—

- (a) the appointment first took effect before the commencement of this Article, and
- (b) it continues to have effect after such commencement.

(4) Paragraph (3) does not apply in respect of an appointment which continues to have effect after such date as the Secretary of State specifies by order.

(5) An appropriate officer is such person as is prescribed.

### **Office holders: offences**

18.—(1) The Secretary of State may by regulations provide that a person commits an offence if—

- (a) he engages in activity that is regulated activity by virtue of paragraph 1(7) or 7(9) of Schedule 2, and
- (b) he is not subject to monitoring in relation to the activity.

(2) The Secretary of State may by regulations provide that a prescribed person (P) commits an offence if he fails in the prescribed period to make a check in accordance with Article 19 in relation to another person (B) appointed to a position mentioned in paragraph 4(1) or 8(1) of Schedule 2.

(3) Regulations under paragraph (1) or (2) may provide for defences to the offence.

(4) An offence created by regulations under this Article is punishable on summary conviction with a maximum fine not exceeding level 5 on the standard scale.

### **Articles 17 and 18: checks**

19.—(1) This Article has effect for the purposes of Articles 17 and 18.

(2) P makes a check in accordance with this Article if—

- (a) he obtains relevant information relating to B in pursuance of an application under Article 32, or
- (b) he obtains a copy of an enhanced criminal record certificate relating to B issued in relation to P.

(3) P makes a check in accordance with this Article if—

- (a) an enhanced criminal record certificate relating to B is issued during the prescribed period,



- (b) the application for the certificate is countersigned on behalf of P by a registered person (within the meaning of Part 5 of the Police Act 1997 (c. 50)), and
  - (c) P obtains from the registered person the information mentioned in paragraph (4) derived from the certificate.
- (4) The information is—
- (a) whether B is subject to monitoring, and
  - (b) whether IBB is considering whether to include B in a barred list in pursuance of paragraph 3 or 5 or (as the case may be) 9 or 11 of Schedule 1.
- (5) In paragraph (2)(a) “relevant information” means—
- (a) in relation to a person appointed to a position mentioned in paragraph 4(1) of Schedule 2, relevant information relating to children (within the meaning of Article 33);
  - (b) in relation to a person appointed to a position mentioned in paragraph 8(1) of Schedule 2, relevant information relating to vulnerable adults (within the meaning of Article 33).
- (6) For the purposes of paragraph (2)(b) an enhanced criminal record certificate is issued in relation to P only if—
- (a) he countersigned the application for the certificate as a registered person for the purposes of Part 5 of the Police Act 1997, or
  - (b) the application was countersigned on his behalf by such a person.
- (7) In this Article “enhanced criminal record certificate” means—
- (a) in relation to a person appointed to a position mentioned in paragraph 4(1) of Schedule 2, an enhanced criminal record certificate issued under the Police Act 1997 containing suitability information relating to children (within the meaning of section 113BA of that Act);
  - (b) in relation to a person appointed to a position mentioned in paragraph 8(1) of Schedule 2, an enhanced criminal record certificate issued under that Act containing suitability information relating to vulnerable adults (within the meaning of section 113BB of that Act).

### *Exceptions*

#### **Exception to requirement to make monitoring check**

**20.—**(1) Regulated activity falls within this Article if it is carried out for the purposes of or in connection with any of the following—

- (a) an establishment for the detention of persons in lawful custody (within the meaning of Article 3(7));
- (b) a recreational, social, sporting or educational activity provided wholly or mainly for vulnerable adults;
- (c) a course of education or instruction which is provided wholly or mainly for vulnerable adults and is of a prescribed description;
- (d) the provision of services, by or on behalf of a person who provides or manages housing, to vulnerable adults in connection with that housing;

- (e) welfare services of a prescribed description;
  - (f) dealing with payments by a person appointed to receive them as mentioned in Article 3(10)(c).
- (2) Activity does not fall within this Article if the individual engaging in the activity is a prison officer acting in the course of his duty.
- (3) In paragraph (2) “prison officer” includes a prisoner custody officer within the meaning of section 122 of the Criminal Justice and Public Order Act 1994 (c.33).
- (4) Activity does not fall within this Article by virtue of paragraph (1)(b) if—
- (a) the activity is carried out by or for an HSS body
  - (b) the activity is carried out by or in an establishment in relation to which a requirement to register arises under Article 12 of the 2003 Order;
  - (c) the activity is carried out by an agency in relation to which such a requirement arises.
- (5) In this Article “welfare services”—
- (a) includes services which provide support, assistance, advice or counselling to individuals with particular needs;
  - (b) does not include personal social services provided by an HSS body.
- (6) Sub-paragraphs (b), (c), (d) and (e) of paragraph (1) cease to have effect on the relevant day.
- (7) The relevant day is—
- (a) the last day of the period of three years starting on the day any provision of this Article is brought into force, or
  - (b) such later day as the Secretary of State specifies by order.
- (8) A date specified under paragraph (7)(b) must be not more than three years after—
- (a) the relevant day as mentioned in paragraph (7)(a), or
  - (b) the last day specified in respect of the sub-paragraph concerned under paragraph (7)(b).
- (9) The Secretary of State may by order amend or omit any sub-paragraph of paragraph (1).

### **HSS employment**

- 21.**—(1) A regulated activity provider falls within this Article if—
- (a) he permits a person (E) to engage in regulated activity,
  - (b) immediately before the permission takes effect E is engaged in relevant HSS employment,
  - (c) for the duration of the permission E continues to be engaged in that relevant HSS employment, and
  - (d) the regulated activity is also relevant HSS employment.
- (2) Relevant HSS employment is employment—
- (a) with an HSS body; or

(b) with a person who provides health care for an HSS body (wherever the health care is provided),  
in which the employee engages in regulated activity.

*Offences: supplementary*

**Offences: companies, etc.**

**22.**—(1) For the purposes of an offence under Article 13, 14, 15, 27, 31 or 40 or Schedule 4, section 20(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33) applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(2) If an offence under Article 13, 14, 15, 27, 31 or 40 or Schedule 4 is committed by a partnership (whether or not a limited partnership) and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of—

- (a) a partner, or
- (b) a person purporting to act as a partner,

he (as well as the partnership) commits the offence.

**Offences: other persons**

**23.**—(1) A person commits an offence if, in the course of acting or appearing to act on behalf of a regulated activity provider—

- (a) he permits an individual (B) to engage in a regulated activity in relation to which B is not subject to monitoring,
- (b) he knows or has reason to believe that B is not subject to monitoring in relation to that activity, and
- (c) B engages in the activity.

(2) A person commits an offence if, in the course of acting or appearing to act on behalf of a personnel supplier—

- (a) he supplies an individual (B) to another (P),
- (b) he knows or has reason to believe that P will make arrangements for B to engage in regulated activity from which B is barred, and
- (c) he knows or has reason to believe that B is barred from the activity.

(3) A person commits an offence if, in the course of acting or appearing to act on behalf of a personnel supplier—

- (a) he supplies an individual (B) to another (P),
- (b) he knows or has reason to believe that P will make arrangements for B to engage in regulated activity in relation to which B is not subject to monitoring, and
- (c) he knows or has reason to believe that B is not subject to monitoring in relation to the activity.

(4) A person guilty of an offence under paragraph (1) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

- (5) A person guilty of an offence under paragraph (2) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.
- (6) If the commission of an offence under Article 15 is due to the act or reckless default of a person who acts for or appears to act for the regulated activity provider—
- (a) that person is guilty of the offence, and
  - (b) he may be proceeded against and punished whether or not proceedings are also taken against the regulated activity provider.
- (7) In the application of paragraph (6) to a person who is in Crown employment (within the meaning of the Employment Rights (Northern Ireland) Order 1996 (NI 16)), Article 53(2) must be ignored.
- (8) For the purpose of paragraphs (2)(b) and (3)(b), Schedule 2 is modified as follows—
- (a) in paragraph 1, sub-paragraphs (1)(b) and (2)(a) must be disregarded;
  - (b) in paragraph 7(1), the words “if it is carried out frequently by the same person or the period condition is satisfied” must be disregarded;
  - (c) in paragraph 7(4), paragraph (a) must be disregarded.
- (9) In determining what is the appropriate sentence to pass in respect of a person who is convicted of an offence under paragraph (1) in a case where the regulated activity falls within paragraph 1(1) or (2) or 7(1) or (4) of Schedule 2 the court must consider the extent to which the offender had regard to any guidance issued by the Secretary of State as to the circumstances in which an activity is carried out frequently.

### **Article 23: exclusions and defences**

- 24.—**(1) A person does not commit an offence under Article 23 if B has not attained the age of 16.
- (2) A person does not commit an offence under Article 23 if the regulated activity—
- (a) is regulated activity relating to adults, and
  - (b) falls within Article 20.
- (3) A person does not commit an offence under Article 23(1) if, in relation to any continuous period for which B is permitted to engage in the regulated activity—
- (a) the permission is first given before the commencement of that Article, and
  - (b) it continues to have effect after such commencement.
- (4) Paragraph (3) does not have effect in respect of permission which continues to have effect after such date as the Secretary of State specifies by order.
- (5) A person does not commit an offence under paragraph (1) of Article 23 if—
- (a) the regulated activity provider for whom he acts or appears to act falls within Article 21,

- (b) the permission mentioned in paragraph (1) of Article 23 commences at a time when B is engaged in relevant HSS employment mentioned in Article 21(1)(b) in circumstances mentioned in paragraph (3) above, and
- (c) for the duration of the permission mentioned in paragraph (1) of Article 23, B continues to be engaged in that relevant HSS employment.

(6) A person is not guilty of an offence under Article 23(3) in relation to any period during which B is continuously supplied to another if the period begins before the commencement of that Article.

(7) Paragraph (6) does not have effect in respect of a supply which continues to have effect after such date as the Secretary of State specifies by order.

### *Controlled activity*

#### **Controlled activity relating to children**

**25.—**(1) A reference to a controlled activity relating to children must be construed in accordance with this Article.

(2) An activity which falls within any of paragraphs (3) to (7) is a controlled activity to the extent that it is not a regulated activity relating to children.

(3) An activity falls within this paragraph if—

- (a) it consists in or is carried out in connection with any form of health care, treatment or therapy to which paragraph (8) applies,
- (b) it is carried out frequently by the same person or it is carried out by the same person on more than two days in any period of 30 days, and
- (c) it gives the person an opportunity mentioned in paragraph (9).

(4) An activity falls within this paragraph if—

- (a) it is carried out in an institution of further education,
- (b) it is carried out frequently by the same person or it is carried out by the same person on more than two days in any period of 30 days,
- (c) it is carried out by the person while engaging in any form of work (whether or not for gain),
- (d) it is carried out for or in connection with the purposes of the institution, and
- (e) it gives the person the opportunity mentioned in paragraph (9)(a).

(5) An activity falls within this paragraph if—

- (a) it consists in making payments under Article 18C of the Children Order or the provision of assistance either in connection with the making of such payments or securing the provision of services paid for out of them,
- (b) it is carried out frequently by the same person or it is carried out by the same person on more than two days in any period of 30 days, and
- (c) it gives the person the opportunity mentioned in paragraph (9)(a).

(6) An activity falls within this paragraph if it is carried out as mentioned in paragraph (10) frequently and it gives a person carrying out the activity the opportunity to have access to—

- (a) health, educational or personal social services records relating to children;

- (b) information provided pursuant to Article 24 of the Education (Northern Ireland) Order 2006 (NI 11);
- (c) in the case of a person carrying out an activity mentioned in paragraph (10)(a), records of family proceedings (within the meaning of Article 8(3) of the Children Order) held by an HSS body.

(7) An activity falls within this paragraph if it consists in or involves on a regular basis the day to day management or supervision of a person carrying out an activity which falls within paragraph (3), (4) or (6).

(8) This paragraph applies to health care, treatment or therapy which is provided for a child—

- (a) in pursuance of arrangements made by or under a statutory provision,
- (b) in an establishment in relation to which a requirement to register arises under Article 12 of the 2003 Order, or
- (c) by an agency in relation to which such a requirement arises.

(9) The opportunities are—

- (a) opportunity to have any form of contact with children;
- (b) opportunity to have access to the health records of children.

(10) The activity is carried out—

- (a) for, or on behalf of, an education and library board;
- (b) for, or on behalf of, an HSS body in the exercise of its functions relating to personal social services;
- (c) for, or on behalf of, the Council for the Curriculum, Examinations and Assessments;
- (d) for, or on behalf of, inspectors appointed under Article 102 of the Education and Libraries (Northern Ireland) Order 1986;
- (e) for, or on behalf of, an establishment or agency in respect of which a requirement to register arises under Article 12 of the 2003 Order.

(11) In this Article “personal social services records” means records obtained or held by an HSS body in the exercise of its functions relating to personal social services.

(12) The Secretary of State may, by order, amend paragraphs (2) to (11) (including by adding new paragraphs or omitting or varying any of the paragraphs or anything contained in them).

### **Controlled activity relating to vulnerable adults**

**26.—**(1) A reference to a controlled activity relating to vulnerable adults must be construed in accordance with this Article.

(2) An activity which is ancillary to or is carried out wholly or mainly in relation to an activity which falls within paragraph (4) is a controlled activity to the extent that it is not a regulated activity relating to vulnerable adults if—

- (a) it is carried out frequently by the same person or it is carried out by the same person on more than two days in any period of 30 days, and
- (b) it gives the person an opportunity mentioned in paragraph (5).

(3) An activity which consists in or involves on a regular basis the day to day management or supervision of a person carrying out an activity mentioned in paragraph (2) is also a controlled activity relating to vulnerable adults.

(4) Each of the following falls within this paragraph—

- (a) the provision of primary care services;
- (b) the provision of hospital services;
- (c) the provision of domiciliary care;
- (d) the making of arrangements in connection with an adult placement scheme;
- (e) the provision of personal social services;
- (f) the making of payments under section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002 (c.6);
- (g) such other activity as is prescribed.

(5) The opportunities are—

- (a) opportunity to have any form of contact with a vulnerable adult;
- (b) opportunity to have access to the health records or personal social services records (within the meaning of Article 25(11)) of a vulnerable adult;
- (c) opportunity to have access to such other information as may be prescribed relating to a vulnerable adult.

(6) In this Article—

“adult placement scheme” means a scheme—

- (a) under which an individual agrees with the person carrying on the scheme to provide care or support (which may include accommodation) to an adult who is in need of it, and
- (b) in respect of which a requirement to register arises under Article 12 of the 2003 Order;

“domiciliary care” must be construed in accordance with Article 3(4) and (5);

“hospital services” means in-patient or out-patient services provided by—

- (a) an HSS body;
- (b) an independent hospital (within the meaning of Article 2 of the 2003 Order);
- (c) an independent clinic (within the meaning of that Article);
- (d) an independent medical agency (within the meaning of that Article);

“primary care services” means any of the following—

- (a) primary medical services or primary dental services provided under the 1972 Order;
- (b) general ophthalmic services provided in accordance with Article 62 of that Order;
- (c) pharmaceutical services provided in pursuance of arrangements made under Article 63 of that Order ;
- (d) a service which corresponds to a service mentioned in any of sub-paragraphs (a) to (c) but which is provided otherwise than by virtue of

arrangements made pursuant to a statutory provision mentioned in that sub-paragraph.

### **Controlled activity: regulations**

- 27.—(1) The Secretary of State may, by regulations, make provision as to—
- (a) the persons who are permitted to engage in controlled activity;
  - (b) the steps which must be taken by a responsible person in connection with permitting another to engage in controlled activity;
  - (c) circumstances in which a responsible person must not permit another to engage in controlled activity.
- (2) The regulations may—
- (a) include provision for a responsible person who contravenes any provision of the regulations to be guilty of an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale;
  - (b) in relation to such an offence, make provision corresponding to Articles 22, 23 and 24.
- (3) A person is a responsible person if—
- (a) he is responsible for the management or control of a controlled activity, and
  - (b) if the controlled activity is carried out for the purposes of an organisation, his exercise of that responsibility is not subject to supervision or direction by any other person for those purposes.

### *Monitoring*

### **Monitoring**

- 28.—(1) An individual is subject to monitoring in relation to regulated activity if—
- (a) he is not barred from engaging in the activity,
  - (b) he makes a monitoring application,
  - (c) he satisfies the prescribed requirements, and
  - (d) he pays such fee (if any) as is prescribed.
- (2) A monitoring application must specify whether it is in respect of—
- (a) regulated activity relating to children, or
  - (b) regulated activity relating to vulnerable adults.
- (3) On a monitoring application being made the Secretary of State must—
- (a) make such enquiries as he thinks appropriate to ascertain whether any relevant information exists in relation to the individual;
  - (b) request the person who holds such information to provide it to the Secretary of State.
- (4) The Secretary of State must—
- (a) provide the individual with any disclosable information that he has, or
  - (b) notify the individual that he has no disclosable information.



(5) Disclosable information is information provided to the Secretary of State under paragraph (3)(b) in relation to the individual, but does not include information to which paragraph (9) applies.

(6) Paragraph (4) does not apply if the individual made an application for an enhanced criminal record certificate (under section 113B of the Police Act 1997 (c. 50)) simultaneously with his monitoring application.

(7) The Secretary of State must also ensure that—

- (a) at such intervals as he thinks appropriate such enquiries are made as he thinks appropriate to ascertain whether any new relevant information exists in relation to the individual;
- (b) the person who holds such new relevant information is requested to provide it to him.

(8) Relevant information is—

- (a) the prescribed details of relevant matter (within the meaning of Article section 113A of the Police Act 1997);
- (b) information which the chief officer of a relevant police force thinks might be relevant in relation to the regulated activity concerned;
- (c) such other information as may be prescribed.

(9) This paragraph applies to information mentioned in paragraph (8)(b) which the chief officer of a relevant police force thinks it would not be in the interests of the prevention or detection of crime to disclose to an individual subject to monitoring.

(10) A monitoring application is an application made to the Secretary of State in the prescribed form and manner.

(11) The prescribed requirements may include requirements as to the manner in which the applicant must prove his identity (identification requirements); and if such requirements include a requirement that the applicant has his fingerprints taken at such place and in such manner as may be prescribed, the regulations may make provision requiring their destruction in specified circumstances and by specified persons.

(12) For the purpose of verifying evidence of identity supplied in pursuance of the identification requirements the Secretary of State may obtain such information as he thinks is appropriate from data held—

- (a) by the Identity and Passport Service;
- (b) by the Driver and Vehicle Agency in Northern Ireland or the Driver and Vehicle Licensing Agency;
- (c) by the Department for Social Development or the Secretary of State in connection with keeping records of national insurance numbers;
- (d) by such other persons or for such purposes as is prescribed.

(13) Relevant information is new if it was not discovered when any earlier inquiries under this Article were carried out.

(14) References to a relevant police force must be construed in accordance with section 113B of the Police Act 1997 as if an application under this Article were an application under that section.

### **Monitoring fees**

**29.**—(1) This Article has effect in respect of fees which may be prescribed in relation to applications for monitoring under Article 28.

(2) In setting a fee for an application made during the period of 5 years beginning with the commencement of that Article, the Secretary of State may take account of expenditure incurred, or which he thinks will be incurred, by him before the end of that period (taking one financial year with another)—

- (a) in connection with the operation of IBB (including payments under paragraph 11 of Schedule 1 to the Safeguarding Vulnerable Groups Act 2006);
- (b) in respect of any other expenditure of the Secretary of State in connection with his functions under this Order.

(3) In setting a fee for an application made after that period, the Secretary of State may take account of expenditure incurred, or which he thinks will be incurred, by him—

- (a) in making payments under paragraph 11 of that Schedule;
- (b) in respect of any other expenditure of the Secretary of State in connection with his functions under this Order.

(4) For the purposes of paragraph (2), it is immaterial that any expenditure is incurred before the commencement of Article 28.

(5) The power to prescribe fees is exercisable only with the consent of the Treasury.

(6) Fees received by the Secretary of State by virtue of Article 28(1)(d) must be paid into the Consolidated Fund of the United Kingdom.

### **Ceasing monitoring**

**30.**—(1) The Secretary of State may cease monitoring as mentioned in Article 28 in relation to an individual in such circumstances as are prescribed.

(2) The Secretary of State must cease such monitoring in relation to an individual who—

- (a) satisfies the Secretary of State that he is not engaged in the regulated activity concerned, and
- (b) requests the Secretary of State to cease monitoring.

### **Prohibition of requirement to produce certain records**

**31.**—(1) A person (P) must not, in connection with—

- (a) the recruitment of another person as an employee, or
- (b) the continued employment of another person,

require that other person or a third party to supply him with a relevant record.

(2) A person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public must not, as a condition of providing or offering to provide any goods, facilities or services to another person, require that other person or a third party to supply him with a relevant record.

(3) Paragraph (1) does not apply if the duties of the employee include activity of a kind mentioned in paragraph 2(1) or 7(1) of Schedule 2 and the activity is for, or for the benefit, of—

- (a) P himself;
- (b) a child, or vulnerable adult, who is a member of P's family;
- (c) a child, or vulnerable adult, who is a friend of P.

(4) "Family" and "friend" must be construed in accordance with Article 4.

(5) A person who contravenes paragraph (1) or (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) A relevant record is the record of information provided by the Secretary of State under Article 28(4).

(7) An employee is an individual who—

- (a) works under a contract of employment, as defined by Article 3(2) of the Employment Rights (Northern Ireland) Order 1996 (NI 16),
- (b) provides any service under a contract for services, or
- (c) holds any office,

whether or not he is entitled to remuneration; and "employment" must be construed accordingly.

#### *Notices and information*

#### **Provision of vetting information**

**32.—**(1) The Secretary of State must provide a person (A) with the information mentioned in paragraph (4) in relation to another (B) if—

- (a) A makes an application for the information,
- (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 he falls within column 1 of a specified entry, and
- (b) that B has consented to the provision of the information to A.

(3) In this Article references to a specified entry are to an entry in the table in Schedule 5 specified by A in his declaration.

(4) The information is—

- (a) if column 2 of the specified entry refers to children, relevant information relating to children, and
- (b) if column 2 of the specified entry refers to vulnerable adults, relevant information relating to vulnerable adults.

(5) Sub-paragraph (b) of paragraph (2) does not apply if the specified entry is 17.

(6) If B consents to the provision of information to A in relation to an application under this Article, the consent also has effect in relation to any subsequent such application by A.

(7) The Secretary of State may prescribe the form, manner and contents of an application for the purposes of this Article (including the form and manner of a declaration contained in such an application).

(8) The Secretary of State may by regulations make provision requiring an authority which makes or proposes to make payments to or on behalf of a person in accordance with regulations under Article 18C of the Children Order or section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002 (c.6) to inform the person of his right to obtain relevant information under this Article.

### **Meaning of relevant information in Article 32**

**33.**—(1) This Article has effect for the purposes of Article 32.

(2) Relevant information relating to children is—

- (a) whether B is subject to monitoring in relation to regulated activity relating to children, and
- (b) if so, whether he is undergoing assessment.

(3) Relevant information relating to vulnerable adults is—

- (a) whether B is subject to monitoring in relation to regulated activity relating to vulnerable adults, and
- (b) if so, whether he is undergoing assessment.

(4) B is undergoing assessment if—

- (a) the Secretary of State is required to notify B as mentioned in Article 28(4) in connection with B's monitoring application but has not yet done so;
- (b) B has made a simultaneous application under section 113B of the Police Act 1997 but the Secretary of State has not yet issued an enhanced criminal record certificate under that section;
- (c) in relation to paragraph (2)(b), IBB is considering whether to include B in the children's barred list in pursuance of paragraph 3 or 5 of Schedule 1;
- (d) in relation to paragraph (3)(b), IBB is considering whether to include B in the adults' barred list in pursuance of paragraph 9 or 11 of that Schedule.

(5) In paragraph (4)(b) "simultaneous application" means an application made simultaneously with B's monitoring application under Article 28.

(6) The Secretary of State may by order amend the preceding provisions of this Article for the purpose of altering the meaning of relevant information relating to children or vulnerable adults (as the case may be).

### **Notification of cessation of monitoring**

**34.**—(1) The Secretary of State must establish and maintain a register for the purposes of this Article.

(2) The Secretary of State must register a person (A) in relation to another (B) if—

- (a) A makes an application to be registered in relation to B,
- (b) the application contains the appropriate declaration,
- (c) the Secretary of State has no reason to believe that the declaration is false, and

- (d) B is subject to monitoring in relation to the regulated activity to which the application relates.
- (3) The appropriate declaration is a declaration by A—
  - (a) that he falls within column 1 of a specified entry, and
  - (b) that B has consented to the application.
- (4) In this Article references to a specified entry are to an entry in the table in Schedule 5 specified by A in his declaration.
- (5) A's application and registration relate—
  - (a) if column 2 of the specified entry refers to children, to regulated activity relating to children;
  - (b) if column 2 of the specified entry refers to vulnerable adults, to regulated activity relating to vulnerable adults.
- (6) The Secretary of State must notify A if B ceases to be subject to monitoring in relation to the regulated activity to which A's registration relates.
- (7) The requirement under paragraph (6) is satisfied if notification is sent to any address recorded against A's name in the register.
- (8) Sub-paragraph (b) of paragraph (3) does not apply if the specified entry is 17.
- (9) If B consents to the provision of information to A under Article 32 the consent also has effect as consent to any application by A to be registered in relation to B under this Article.
- (10) The Secretary of State may prescribe the form, manner and contents of an application for the purposes of this Article (including the form and manner of a declaration contained in such an application).

### **Cessation of registration**

- 35.—**(1) In this Article references to registration are to registration in the register maintained for the purposes of Article 34.
- (2) Once a person is notified as mentioned in paragraph (6) of that Article, his registration ceases.
  - (3) The Secretary of State may cancel a person's registration in such circumstances as are prescribed.
  - (4) The Secretary of State must cancel a person's registration—
    - (a) if the person applies for it to be cancelled;
    - (b) in prescribed circumstances, if the person in relation to whom he is registered applies for it to be cancelled.
  - (5) When a person's registration is cancelled under paragraph (3) or (4)(b), the Secretary of State must notify him of that fact.
  - (6) The requirement under paragraph (5) is satisfied if notification is sent to any address recorded against A's name in the register.

### **Declarations under Articles 32 and 34**

**36.**—(1) An individual commits an offence if, in an application made for the purposes of Article 32 or 34—

- (a) he makes a false declaration, and
- (b) he either knows that it is false or is reckless as to whether it is false.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Regulated activity providers: duty to refer**

**37.**—(1) Paragraph (2) applies to—

- (a) a regulated activity provider who holds any prescribed information in relation to a person (P) engaged in regulated activity provided by him;
- (b) a responsible person (within the meaning of Article 27) who holds any prescribed information in relation to a person (P) whom he permits to engage in controlled activity.

(2) A person to whom this paragraph applies must provide IBB with the information if—

- (a) he withdraws permission for P to engage in the activity for a reason mentioned in paragraph (3), or
- (b) he does not withdraw permission for such a reason but would or might have done so if P had not otherwise ceased to engage in the activity.

(3) The reasons are that the person to whom paragraph (2) applies thinks—

- (a) that paragraph 1, 2, 7 or 8 of Schedule 1 applies to P,
- (b) that P has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 1), or
- (c) that the harm test is satisfied.

(4) The harm test is that P may—

- (a) harm a child or vulnerable adult,
- (b) cause a child or vulnerable adult to be harmed,
- (c) put a child or vulnerable adult at risk of harm,
- (d) attempt to harm a child or vulnerable adult, or
- (e) incite another to harm a child or vulnerable adult.

(5) For the purposes of paragraph (3)(b), conduct is inappropriate if it appears to the person to whom paragraph (2) applies to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 1.

(6) If regulated activity engaged in by P—

- (a) is regulated activity relating to vulnerable adults, and
- (b) falls within Article 20,

paragraph (2) must be read as if for “must” there were substituted “may”.

(7) This Article does not apply if the conditions specified in paragraph (2) are fulfilled before the Article is commenced.

### **Personnel suppliers: duty to refer**

**38.—**(1) A personnel supplier must provide IBB with any prescribed information it holds in relation to a person (P) who has been supplied by it to another person if the supplier knows that P has ceased to be engaged in regulated activity or controlled activity in the circumstances mentioned in paragraph (2)(a) or (b) of Article 37.

(2) A personnel supplier which is an employment agency or employment business must provide IBB with any prescribed information it holds in relation to a person (P) for whom it acts if—

- (a) the agency or business determines to cease to act for P for a reason mentioned in paragraph (4), or
- (b) it does not determine to cease to act for P for such a reason but would or might have done so if its arrangement with, or employment of, him had not otherwise come to an end.

(3) A personnel supplier which is an educational institution must provide IBB with any prescribed information it holds in relation to a student (P) following a course at the institution if—

- (a) the institution determines to cease to supply P to another person for him to engage in regulated or controlled activity for a reason mentioned in paragraph (4),
- (b) the institution determines that P should cease to follow a course at the institution for a reason mentioned in paragraph (4), or
- (c) it does not determine as mentioned in sub-paragraph (a) or (b) for such a reason but would or might have done so if P had not otherwise ceased to engage in the activity or ceased to follow the course.

(4) The reasons are that the personnel supplier thinks—

- (a) that paragraph 1, 2, 7 or 8 of Schedule 1 applies to P,
- (b) that P has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 1), or
- (c) that the harm test is satisfied.

(5) The harm test is that P may—

- (a) harm a child or vulnerable adult,
- (b) cause a child or vulnerable adult to be harmed,
- (c) put a child or vulnerable adult at risk of harm,
- (d) attempt to harm a child or vulnerable adult, or
- (e) incite another to harm a child or vulnerable adult.

(6) For the purposes of paragraph (4)(b), conduct is inappropriate if it appears to the personnel supplier to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 1.

(7) An employment agency acts for a person if it makes arrangements with him with a view to—

- (a) finding him employment with an employer, or
- (b) supplying him to employers for employment by them.

(8) An employment business acts for a person if it employs him to act for and under the control of other persons in any capacity.

(9) In this Article “employment” has the same meaning as in Part II of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (NI 20).

(10) This Article does not apply if the conditions specified in paragraph (1), (2) or (3) are fulfilled before the Article is commenced.

### **Regulated activity providers: duty to provide information on request etc.**

**39.**—(1) This Article applies if IBB is considering—

- (a) whether to include any person in a barred list;
- (b) whether to remove any person from a barred list.

(2) IBB may require—

- (a) any regulated activity provider who has made arrangements for that person to engage in regulated activity (whether or not the arrangements are still in place),
- (b) any responsible person (within the meaning of Article 27) who permits or has permitted that person to engage in controlled activity,
- (c) any personnel supplier which is an employment agency or employment business and which acts for or has acted for that person, or
- (d) any personnel supplier which is an educational institution and which has supplied that person to another person for him to engage in regulated or controlled activity,

to provide IBB with any prescribed information he or it holds relating to the person.

(3) An employment agency acts for a person if it makes arrangements with him with a view to—

- (a) finding him relevant employment with an employer, or
- (b) supplying him to employers for relevant employment by them.

(4) Relevant employment is employment which consists in or involves engaging in regulated or controlled activity.

(5) An employment business acts for a person if it employs him to engage in regulated or controlled activity for and under the control of other persons.

(6) In this Article “employment” has the same meaning as in Part II of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (NI 20).

### **Duty to provide information: offences**

**40.**—(1) A person commits an offence if—

- (a) he is required under Article 37 or 38 or in pursuance of Article 39 to provide information to IBB, and
- (b) he fails, without reasonable excuse, to provide the information.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.



*Education and Library Boards and HSS Bodies*

**Education and Library Boards and HSS Bodies: duty to refer**

**41.**—(1) An education and library board (“a board”) and an HSS body must provide IBB with any prescribed information it holds relating to a person if the first and second conditions are satisfied.

(2) The first condition is that the board or HSS body thinks—

- (a) that paragraph 1, 2, 7 or 8 of Schedule 1 applies to the person,
- (b) that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 1) occurring after the commencement of this Article, or
- (c) that the harm test is satisfied.

(3) The harm test is that the person may—

- (a) harm a child or vulnerable adult,
- (b) cause a child or vulnerable adult to be harmed,
- (c) put a child or vulnerable adult at risk of harm,
- (d) attempt to harm a child or vulnerable adult,
- (e) incite another to harm a child or vulnerable adult.

(4) The second condition is that the board or HSS body thinks—

- (a) that the person is engaged or may engage in regulated activity or controlled activity, and
- (b) (except in a case where paragraph 1, 2, 7 or 8 of Schedule 1 applies) that IBB may consider it appropriate for the person to be included in a barred list.

(5) A board or an HSS body may provide IBB with any prescribed information it holds relating to a person if—

- (a) the board or HSS body thinks that a person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 1) occurring before the commencement of this Article, and
- (b) the condition in paragraph (4) is satisfied.

(6) For the purposes of paragraphs (2)(b) or (5)(a), conduct is inappropriate if it appears to the board or HSS body to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 1.

**Education and Library Boards and HSS bodies: duty to provide information on request**

**42.**—(1) This Article applies if IBB is considering—

- (a) whether to include any person in a barred list;
- (b) whether to remove any person from a barred list.

(2) If IBB thinks that an education and library board or an HSS body holds any prescribed information relating to the person, it may require that board or body to provide it with the information.

(3) The board or body must comply with a requirement under paragraph (2).

*Professional bodies and supervisory authorities*

**Registers: duty to refer**

**43.**—(1) A keeper of a relevant register must provide IBB with any prescribed information he holds relating to a person if the first and second conditions are satisfied.

(2) The first condition is that the keeper thinks—

- (a) that paragraph 1, 2, 7 or 8 of Schedule 1 applies to the person,
- (b) that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 1) occurring after the commencement of this Article, or
- (c) that the harm test is satisfied.

(3) The harm test is that the person may—

- (a) harm a child or vulnerable adult,
- (b) cause a child or vulnerable adult to be harmed,
- (c) put a child or vulnerable adult at risk of harm,
- (d) attempt to harm a child or vulnerable adult, or
- (e) incite another to harm a child or vulnerable adult.

(4) The second condition is that the keeper thinks—

- (a) that the person is engaged or may engage in regulated activity or controlled activity, and
- (b) (except in a case where paragraph 1, 2, 7 or 8 of Schedule 1 applies) that IBB may consider it appropriate for the person to be included in a barred list.

(5) A keeper of a relevant register may provide IBB with any prescribed information he holds relating to a person if—

- (a) he thinks that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 1) occurring before the commencement of this Article, and
- (b) the condition in paragraph (4) is satisfied.

(6) For the purposes of paragraph (2)(b) or (5)(a), conduct is inappropriate if it appears to the keeper to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 1.

(7) In this Article—

- (a) a relevant register is a register appearing in column 1 of the following table, and
- (b) in relation a relevant register, the keeper of the register is the corresponding person appearing in column 2 of the table.

<i>Relevant register</i>	<i>Keeper of the register</i>
1. The register of teachers maintained under Article 35 of the Education	The General Teaching Council for Northern Ireland

(Northern Ireland) Order 1998 (NI 13)	
2. The register of pharmaceutical chemists maintained under Article 6 of the Pharmacy (Northern Ireland) Order 1976 (NI 22)	The registrar appointed under Article 9(1) of that Order
3. Either of the lists of medical practitioners kept under section 2 of the Medical Act 1983 (c. 54)	The registrar of the General Medical Council
4. The dentists register kept under section 14 of the Dentists Act 1984 (c. 24) or the dental care professionals register kept under section 36B of that Act	The registrar appointed under section 14 of that Act
5. The register of optometrists or the register of dispensing opticians maintained under section 7 of the Opticians Act 1989 (c. 44), or the register of persons undertaking training as optometrists or the register of persons undertaking training as dispensing opticians maintained under section 8A of that Act	The registrar of the General Optical Council
6. The register of osteopaths maintained under section 2 of the Osteopaths Act 1993 (c. 21)	The Registrar of Osteopaths
7. The register of chiropractors maintained under section 2 of the Chiropractors Act 1994 (c. 17)	The Registrar of Chiropractors
8. The register of social workers and social care workers maintained under section 3 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c.3)	The Northern Ireland Social Care Council
9. The register of qualified nurses and midwives maintained under Article 5 of the Nursing and Midwifery Order 2001 (S.I. 2002/253)	The registrar appointed under Article 4 of that Order
10. The register of members of relevant professions maintained under Article 5 of the Health Professions Order 2001 (S.I. 2002/254)	The registrar appointed under Article 4 of that Order

(8) The Secretary of State may by order amend the table in paragraph (7) by inserting an entry or amending or omitting an entry for the time being contained in the Table.

**Registers: duty to provide information on request**

44.—(1) This Article applies if IBB is considering—

- (a) whether to include in a barred list a person who appears on a relevant register;
- (b) whether to remove such a person from a barred list.

(2) IBB may require the keeper of the register to provide it with any prescribed information he holds relating to the person.

(3) The keeper of the register must comply with a requirement under paragraph (2).

(4) References to a relevant register and the keeper of a relevant register must be construed in accordance with Article 43(7).

### **Registers: notice of barring and cessation of monitoring**

**45.**—(1) Paragraph (2) applies if the Secretary of State knows or thinks that a person (A) appears on a relevant register and either—

- (a) A is newly included in a barred list or the Secretary of State becomes aware that A is subject to a relevant disqualification, or
- (b) having been subject to monitoring, A ceases to be so subject by virtue of Article 30.

(2) The Secretary of State must—

- (a) notify the keeper of the register of the circumstances mentioned in subparagraph (a) or (b) (as the case may be) of paragraph (1), and
- (b) in a case where A is newly included in a barred list, require IBB to provide the keeper with all the information on which IBB relied in deciding to include A in the list.

(3) If IBB—

- (a) knows or thinks that a person appears on a relevant register; and
- (b) becomes aware of relevant information relating to that person,

it must provide the keeper of the register with that information.

(4) In paragraph (3), relevant information is information which—

- (a) relates to the protection of children or vulnerable adults in general, or of any child or vulnerable adult in particular, and
- (b) is relevant to the exercise of any function of the keeper of the register.

(5) But, in that paragraph, relevant information does not include—

- (a) information that any of the events mentioned in paragraph (1)(a) and (b) has occurred in relation to the person;
- (b) the information mentioned in paragraph (2)(b);
- (c) information falling within paragraph 19(5) of Schedule 1.

(6) In this Article—

- (a) a relevant register is a register appearing in column 1 of entry 1 or 8 of the table in Article 43(7), and
- (b) in relation a relevant register, the keeper of the register is the corresponding person appearing in column 2 of the Table.

(7) A person is subject to a relevant disqualification if he is included in a list maintained under the law of England and Wales or Scotland which the Secretary of State specifies by order as corresponding to a barred list.

**Registers: power to apply for vetting information**

**46.**—(1) If the keeper of a relevant register applies to the Secretary of State for information within paragraph (2) in relation to a person (B), the Secretary of State must provide the keeper of the register with that information.

(2) The information within this paragraph is—

- (a) whether B is barred from regulated activity relating to children or vulnerable adults,
- (b) whether IBB is considering whether to include B in a barred list in pursuance of paragraph 3 or 5 or 9 or 11 of Schedule 1,
- (c) whether B is subject to monitoring in relation to regulated activity relating to children or vulnerable adults,
- (d) if B is subject to such monitoring and the Secretary of State is required to notify B as mentioned in Article 28(4), whether the Secretary of State has yet done so, and
- (e) if B is subject to such monitoring and has made a simultaneous application under section 113B of the Police Act 1997, whether the Secretary of State has yet issued an enhanced criminal record certificate under that section.

(3) The keeper of a relevant register may apply for information under this Article in relation to a person only if—

- (a) the person appears in the register, or
- (b) the person is being considered for inclusion in the register.

(4) In this Article—

- (a) a relevant register is a register appearing in column 1 of entry 1 or 8 of the table in Article 43(7), and
- (b) in relation to a relevant register, the keeper of the register is the corresponding person appearing in column 2 of the table.

(5) In paragraph (2)(e) “simultaneous application” means an application made simultaneously with B’s monitoring application under Article 28.

(6) The Secretary of State may by order amend this Article for the purpose of altering the information within paragraph (2).

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

**Supervisory authorities: duty to refer**

**47.**—(1) A supervisory authority must provide IBB with any prescribed information it holds relating to a person if the first and second conditions are satisfied.

(2) The first condition is that the supervisory authority thinks, on the basis of relevant evidence—

- (a) that paragraph 1, 2, 7 or 8 of Schedule 1 applies to the person,
- (b) that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 1) occurring after the commencement of this Article, or

- (c) that the harm test is satisfied.
- (3) The harm test is that the person may—
  - (a) harm a child or vulnerable adult,
  - (b) cause a child or vulnerable adult to be harmed,
  - (c) put a child or vulnerable adult at risk of harm,
  - (d) attempt to harm a child or vulnerable adult, or
  - (e) incite another to harm a child or vulnerable adult.
- (4) The second condition is that the supervisory authority thinks—
  - (a) that the person is engaged or may engage in regulated activity or controlled activity, and
  - (b) (except in a case where paragraph 1, 2, 7 or 8 of Schedule 1 applies) that IBB may consider it appropriate for the person to be included in a barred list.
- (5) The supervisory authority may provide IBB with any prescribed information it holds relating to a person if—
  - (a) it thinks, on the basis of relevant evidence, that the person has engaged in relevant conduct (within the meaning of paragraph 4 or 10 of Schedule 1) occurring before the commencement of this Article, and
  - (b) the condition in paragraph (4) is satisfied.
- (6) Paragraph (1) does not apply if the supervisory authority is satisfied that IBB already has the information.
- (7) A supervisory authority is—
  - (a) the Regulation and Improvement Authority in respect of its functions under the 2003 Order;
  - (b) an inspector appointed under Article 102 of the Education and Libraries (Northern Ireland) Order 1986 in the exercise of his functions.
- (8) Relevant evidence is evidence obtained by the supervisory authority in the exercise of the functions mentioned in paragraph (7).
- (9) The Secretary of State may by order amend paragraph (7) by inserting a sub-paragraph or amending or omitting a sub-paragraph for the time being contained in that paragraph.
- (10) For the purposes of paragraph (2)(b) or (5)(a), conduct is inappropriate if it appears to the supervisory authority to be inappropriate having regard to the guidance issued by the Secretary of State under paragraph 4(6) or 10(6) of Schedule 1.

**Supervisory authorities: duty to provide information on request**

- 48.—**(1) This Article applies if IBB is considering—
- (a) whether to include in a barred list a person in relation to whom IBB thinks that a supervisory authority may have prescribed information;
  - (b) whether to remove such a person from a barred list.
- (2) IBB may require the supervisory authority to provide it with any prescribed information it holds relating to the person.

(3) The supervisory authority must comply with a requirement under paragraph (2).

**Supervisory authorities: power to apply for vetting information**

**49.**—(1) If a supervisory authority applies to the Secretary of State for information within paragraph (2) or (3) relating to a person (B), the Secretary of State must provide the supervisory authority with that information.

(2) The information within this paragraph is—

- (a) whether B is barred from regulated activity relating to children,
- (b) whether IBB is considering whether to include B in the children’s barred list in pursuance of paragraph 3 or 5 of Schedule 1,
- (c) whether B is subject to monitoring in relation to regulated activity relating to children,
- (d) if B is subject to such monitoring and the Secretary of State is required to notify B as mentioned in Article 28(4) in connection with his monitoring application, whether the Secretary of State has yet done so, and
- (e) if B is subject to such monitoring and has made a simultaneous application under section 113B of the Police Act 1997, whether the Secretary of State has yet issued an enhanced criminal record certificate under that section.

(3) The information within this paragraph is—

- (a) whether B is barred from regulated activity relating to vulnerable adults,
- (b) whether IBB is considering whether to include B in the adults’ barred list in pursuance of paragraph 9 or 11 of Schedule 1,
- (c) whether B is subject to monitoring in relation to regulated activity relating to vulnerable adults,
- (d) if B is subject to such monitoring and the Secretary of State is required to notify B as mentioned in Article 28(4) in connection with his monitoring application, whether the Secretary of State has yet done so, and
- (e) if B is subject to such monitoring and has made a simultaneous application under section 113B of the Police Act 1997, whether the Secretary of State has yet issued an enhanced criminal record certificate under that section.

(4) A supervisory authority may apply for information under this Article only if the information is required in connection with the exercise of a function of the supervisory authority mentioned in Article 47(7).

(5) In paragraphs (2)(e) and (3)(e), “simultaneous application” means an application made simultaneously with B’s monitoring application under Article 28.

(6) The Secretary of State may by order amend this Article for the purpose of altering the information within paragraph (2) or (3).

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

### **Supervisory authorities: notification of barring, etc in respect of children**

**50.**—(1) This Article applies if—

- (a) a person is newly included in the children’s barred list,
- (b) the Secretary of State becomes aware that a person is subject to a relevant children’s disqualification, or
- (c) having been subject to monitoring in relation to regulated activity relating to children, a person ceases to be so subject by virtue of Article 30.

(2) The Secretary of State must notify every interested supervisory authority of the circumstance mentioned in sub-paragraph (a), (b) or (c) (as the case may be) of paragraph (1).

(3) A supervisory authority is an interested supervisory authority only if—

- (a) it has applied to the Secretary of State to be notified if any of the circumstances mentioned in paragraph (1) occurs in relation to the person, and
- (b) the application has not been withdrawn.

(4) A supervisory authority may apply to the Secretary of State under paragraph (3)(a) only if the notification is required in connection with the exercise of a function of the supervisory authority mentioned in Article 47(7).

(5) For the purposes of paragraph (3)(b) an application is withdrawn if the supervisory authority notifies the Secretary of State that it no longer wishes to be notified if any of the circumstances mentioned in paragraph (1) occurs in relation to the person.

(6) A person is subject to a relevant children’s disqualification if he is included in a list maintained under the law of England and Wales or Scotland which the Secretary of State specifies by order as corresponding to the children’s barred list.

(7) The Secretary of State may provide that in prescribed circumstances a supervisory authority is not an interested supervisory authority for the purposes of this Article.

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

### **Supervisory authorities: notification of barring, etc. in respect of vulnerable adults**

**51.**—(1) This Article applies if—

- (a) a person is newly included in the adults’ barred list,
- (b) the Secretary of State becomes aware that a person is subject to a relevant adults’ disqualification, or
- (c) having been subject to monitoring in relation to regulated activity relating to vulnerable adults, a person ceases to be so subject by virtue of Article 30.

(2) The Secretary of State must notify every interested supervisory authority of the circumstance mentioned in sub-paragraph (a), (b) or (c) (as the case may be) of paragraph (1).

(3) A supervisory authority is an interested supervisory authority only if—



(a) it has applied to the Secretary of State to be notified if any of the circumstances mentioned in paragraph (1) occurs in relation to the person, and

(b) the application has not been withdrawn.

(4) A supervisory authority may apply to the Secretary of State under paragraph (3)(a) only if the notification is required in connection with the exercise of a function of the supervisory authority mentioned in Article 47(7).

(5) For the purposes of paragraph (3)(b) an application is withdrawn if the supervisory authority notifies the Secretary of State that it no longer wishes to be notified if any of the circumstances mentioned in paragraph (1) occurs in relation to the person.

(6) A person is subject to a relevant adults' disqualification if he is included in a list maintained under the law of England and Wales or Scotland which the Secretary of State specifies by order as corresponding to the adults' barred list.

(7) The Secretary of State may provide that in prescribed circumstances a supervisory authority is not an interested supervisory authority for the purposes of this Article.

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

#### **Provision of information to supervisory authorities**

**52.**—(1) This Article applies if IBB has information that it thinks is relevant to a supervisory authority.

(2) IBB must provide the supervisory authority with the information.

(3) Information is relevant to a supervisory authority if—

(a) it relates to the protection of children or vulnerable adults in general, or of any child or vulnerable adult in particular, and

(b) is relevant to the exercise of any function of the authority,

but does not include information falling within paragraph 19(5) of Schedule 1 or information that any of the events mentioned in Article 50(1)(a), (b) and (c) or 51(1)(a), (b) and (c) has occurred in relation to a person.

#### *Miscellaneous*

#### **Crown application**

**53.**—(1) Subject to the provisions of this Article, this Order and any regulations or orders made under it bind the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

(2) No contravention by the Crown of any provision of this Order or of any regulations or order made under it makes the Crown criminally liable.

(3) Despite paragraph (2), this Order and any regulations or orders made under it apply to persons in Crown employment (within the meaning of the Employment Rights (Northern Ireland) Order 1996 (NI 16)) as they apply to other persons.

(4) Paragraph (2) of Article 10 does not apply in relation to any activity carried out by the Crown.

(5) Each government department and other body performing functions on behalf of the Crown—

- (a) if the department or body engages in regulated activity, is the regulated activity provider in relation to the activity;
- (b) if the department or body engages in controlled activity, is the responsible person (within the meaning of Article 27) in relation to the activity.

(6) In paragraph (5) “body” includes office-holder.

#### **Referrals: findings of fact immaterial**

**54.**—(1) For the purposes of the provisions mentioned in paragraph (2), it is immaterial whether there is a finding of fact in any proceedings.

(2) The provisions are—

- (a) Article 37(3)(b) and (c);
- (b) Article 38(4)(b) and (c);
- (c) Article 41(2)(b) and (c) and (5)(a);
- (d) Article 43(2)(b) and (c) and (5)(a);
- (e) Article 47(2)(b) and (c) and (5)(a).

#### **Fostering**

**55.**—(1) Despite Article 4, this Order applies to activity that is regulated activity by virtue of paragraph 1(5) of Schedule 2.

(2) Paragraph (1) does not affect the operation of this Order in relation to any other activity that is carried out in connection with a foster child.

(3) Paragraph (4) applies if a person (P)—

- (a) makes arrangements for another person to foster a child as a private foster parent, and
- (b) has power to terminate the arrangements.

(4) P is, if he would not otherwise be, a regulated activity provider in relation to fostering carried out by the foster parent in pursuance of the arrangements.

(5) The following provisions of this Article apply for the purposes of this Order.

(6) A person fosters a child if he is a foster parent of the child.

(7) A person is a foster parent if—

- (a) he is an authority foster parent within the meaning of Article 27(3) of the Children Order;
- (b) he is a person with whom a child has been placed by a voluntary organisation under Article 75(1)(a) of that Order;
- (c) he is a private foster parent.

(8) A person is a private foster parent if he falls within paragraph (9) and looks after a child—

- (a) for reward, or
- (b) in pursuance of an arrangement made by someone other than a member of the child’s family.

- (9) A person falls within this paragraph if—
- (a) he fosters the child privately within the meaning of Article 106(1) of the Children Order,
  - (b) he would be so fostering the child but for Article 107(1) of that Order (minimum period of 28 days), or
  - (c) (in the case of a child who has attained the age of 16) he would fall within sub-paragraph (a) or (b) if the child were under the age of 16.
- (10) A person's family includes—
- (a) the person's foster child;
  - (b) the foster child of any member of the person's family;

and references to a family relationship and family member are to be construed accordingly.

### **Alignment with rest of UK**

**56.—**(1) The Secretary of State may, by order, make such provision (including provision amending any statutory provision, including this Order) as he thinks necessary or expedient in consequence of or having regard to any relevant England and Wales legislation or any relevant Scottish legislation.

- (2) An order may—
- (a) include provision for treating a person to whom a monitoring provision applies as if he were subject to monitoring in relation to regulated activity;
  - (b) confer power to make subordinate legislation.
- (3) Relevant England and Wales legislation is any provision applying in England or Wales made by or under an Act of Parliament which the Secretary of State thinks—
- (a) corresponds to provision made by or under this Order,
  - (b) makes monitoring provision, or
  - (c) affects the operation of any provision made by or under this Order.

- (4) Relevant Scottish legislation is any provision made by or under an Act of the Scottish Parliament which the Secretary of State thinks—
- (a) corresponds to provision made by or under this Order,
  - (b) makes monitoring provision, or
  - (c) affects the operation of any provision made by or under this Order.

(5) Monitoring provision is provision for the collation and disclosure of information relating to persons who engage or wish to engage in activity which the Secretary of State thinks corresponds to regulated activity with children or vulnerable adults.

### *General*

### **Damages**

- 57.—**(1) No claim for damages lies in respect of any loss or damage suffered by any person in consequence of—
- (a) the fact that an individual is included in a barred list;

- (b) the fact that an individual is not included in a barred list;
  - (c) the provision of prescribed information in pursuance of any of Articles 37, 38, 39, 41, 42, 43, 44, 47 and 48.
- (2) Paragraph (1)(c) does not apply to the provision of information which is untrue by a person who knows the information is untrue and either—
- (a) he is the originator of the information and he knew at the time he originated the information that it was not true, or
  - (b) he causes another person to be the originator of the information knowing, at the time the information is originated, that it is untrue.
- (3) Nothing in this Order affects section 8 of the Human Rights Act 1998 (c. 42) as it relates to the power of a court to award damages in respect of an unlawful act of a public authority (within the meaning of that Act).

### **Orders and regulations**

**58.**—(1) Orders or regulations under this Order shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(2) Paragraph (1) does not apply to an order made under Article 1, including such an order which contains provision made under Article 61 (except paragraph (3) of that Article).

### **Transitional provision**

**59.** Schedule 6 has effect.

### **Amendments and repeals**

**60.**—(1) Schedule 7 contains amendments.

(2) Schedule 8 contains repeals.

### **Supplementary, incidental, consequential etc. provision**

**61.**—(1) An order or regulations under this Order may include—

- (a) such supplementary, incidental or consequential provision, or
- (b) such transitory, transitional or saving provision,

as the Secretary of State thinks necessary or expedient.

(2) The Secretary of State may by order make such further provision as he considers appropriate—

- (a) for the general purposes, or any particular purpose, of this Order;
- (b) in consequence of any provision made by this Order;
- (c) for giving full effect to this Order or any provision made by it.

(3) An order or regulations under this Order may amend, repeal, revoke or otherwise modify any statutory provision (including this Order).

(4) Nothing in this Order affects the generality of the power conferred by this Article.

*Christine Cook*  
Deputy Clerk of the Privy Council

## SCHEDULES

### SCHEDULE 1

Article 6

#### BARRED LISTS

##### PART I

#### CHILDREN'S BARRED LIST

##### *Automatic inclusion*

1.—(1) This paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.

(2) If it appears to the Secretary of State that this paragraph applies to a person the Secretary of State must refer the matter to IBB.

(3) On the reference being made, IBB must include the person in the children's barred list.

##### *Inclusion subject to consideration of representations*

2.—(1) This paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.

(2) If it appears to the Secretary of State that this paragraph applies to a person the Secretary of State must refer the matter to IBB.

(3) On the reference being made, IBB must—

- (a) include the person in the children's barred list;
- (b) give the person the opportunity to make representations as to why he should be removed from the children's barred list.

(4) If it appears to IBB that it is not appropriate for the person to be included in the list, it must remove him from the list.

##### *Behaviour*

3.—(1) This paragraph applies to a person if—

- (a) it appears to IBB that the person has (at any time) engaged in relevant conduct, and
- (b) IBB proposes to include him in the children's barred list.

(2) IBB must give the person the opportunity to make representations as to why he should not be included in the children's barred list.

(3) IBB must include the person in the children's barred list if—

- (a) it is satisfied that the person has engaged in relevant conduct, and
- (b) it appears to IBB that it is appropriate to include the person in the list.

(4) This paragraph does not apply to a person if the relevant conduct consists only of an offence committed against a child before the commencement of Article

6 and the court, having considered whether to make a disqualification order, decided not to.

(5) In sub-paragraph (4)—

- (a) the reference to an offence committed against a child must be construed in accordance with Chapter II of Part II of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003;
- (b) a disqualification order is an order under Article 23 or 24 of that Order.

4.—(1) For the purposes of paragraph 3 relevant conduct is—

- (a) conduct which endangers a child or is likely to endanger a child;
- (b) conduct which, if repeated against or in relation to a child, would endanger that child or would be likely to endanger him;
- (c) conduct involving sexual material relating to children (including possession of such material);
- (d) conduct involving sexually explicit images depicting violence against human beings (including possession of such images), if it appears to IBB that the conduct is inappropriate;
- (e) conduct of a sexual nature involving a child, if it appears to IBB that the conduct is inappropriate.

(2) A person's conduct endangers a child if he—

- (a) harms a child,
- (b) causes a child to be harmed,
- (c) puts a child at risk of harm,
- (d) attempts to harm a child, or
- (e) incites another to harm a child.

(3) "Sexual material relating to children" means—

- (a) indecent images of children, or
- (b) material (in whatever form) which portrays children involved in sexual activity and which is produced for the purposes of giving sexual gratification.

(4) "Image" means an image produced by any means, whether of a real or imaginary subject.

(5) A person does not engage in relevant conduct merely by committing an offence prescribed for the purposes of this sub-paragraph.

(6) For the purposes of sub-paragraph (1)(d) and (e), IBB must have regard to guidance issued by the Secretary of State as to conduct which is inappropriate.

*Risk of harm*

5.—(1) This paragraph applies to a person if—

- (a) it appears to IBB that the person falls within sub-paragraph (4), and
- (b) IBB proposes to include him in the children's barred list.

(2) IBB must give the person the opportunity to make representations as to why he should not be included in the children's barred list.

- (3) IBB must include the person in the children's barred list if—
- (a) it is satisfied that the person falls within sub-paragraph (4), and
  - (b) it appears to IBB that it is appropriate to include the person in the list.
- (4) A person falls within this sub-paragraph if he may—
- (a) harm a child,
  - (b) cause a child to be harmed,
  - (c) put a child at risk of harm,
  - (d) attempt to harm a child, or
  - (e) incite another to harm a child.

*Restriction on inclusion*

- 6.—(1) IBB must not include a person in the children's barred list—
- (a) only on a particular ground if a relevant Scottish authority has already considered whether the person should be included in a corresponding list on the same ground (whether or not it decided to include him in the list), or
  - (b) if, in accordance with such criteria as the Secretary of State specifies by order, it is more appropriate for the person's case to be considered by the relevant Scottish authority.
- (2) A relevant Scottish authority is such authority as the Secretary of State specifies by order as exercising for the purposes of the law of Scotland functions which correspond to those of IBB.
- (3) A corresponding list is a list maintained for the purposes of the law of Scotland which the Secretary of State specifies by order as corresponding to the children's barred list.

PART II

ADULTS' BARRED LIST

*Automatic inclusion*

- 7.—(1) This paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.
- (2) If it appears to the Secretary of State that this paragraph applies to a person the Secretary of State must refer the matter to IBB.
- (3) On the reference being made, IBB must include the person in the adults' barred list.

*Inclusion subject to consideration of representations*

- 8.—(1) This paragraph applies to a person if any of the criteria prescribed for the purposes of this paragraph is satisfied in relation to the person.
- (2) If it appears to the Secretary of State that this paragraph applies to a person the Secretary of State must refer the matter to IBB.
- (3) On the reference being made, IBB must—



- (a) include the person in the adults' barred list;
  - (b) give the person the opportunity to make representations as to why he should be removed from the adults' barred list.
- (4) If it appears to IBB that it is not appropriate for the person to be included in the list, it must remove him from the list.

*Behaviour*

- 9.—(1) This paragraph applies to a person if—
- (a) it appears to IBB that the person has (at any time) engaged in relevant conduct, and
  - (b) IBB proposes to include him in the adults' barred list.
- (2) IBB must give the person the opportunity to make representations as to why he should not be included in the adults' barred list.
- (3) IBB must include the person in the adults' barred list if—
- (a) it is satisfied that the person has engaged in relevant conduct, and
  - (b) it appears to IBB that it is appropriate to include the person in the list.
- 10.—(1) For the purposes of paragraph 9 relevant conduct is—
- (a) conduct which endangers a vulnerable adult or is likely to endanger a vulnerable adult;
  - (b) conduct which, if repeated against or in relation to a vulnerable adult, would endanger that adult or would be likely to endanger him;
  - (c) conduct involving sexual material relating to children (including possession of such material);
  - (d) conduct involving sexually explicit images depicting violence against human beings (including possession of such images), if it appears to IBB that the conduct is inappropriate;
  - (e) conduct of a sexual nature involving a vulnerable adult, if it appears to IBB that the conduct is inappropriate.
- (2) A person's conduct endangers a vulnerable adult if he—
- (a) harms a vulnerable adult,
  - (b) causes a vulnerable adult to be harmed,
  - (c) puts a vulnerable adult at risk of harm,
  - (d) attempts to harm a vulnerable adult, or
  - (e) incites another to harm a vulnerable adult.
- (3) "Sexual material relating to children" means—
- (a) indecent images of children, or
  - (b) material (in whatever form) which portrays children involved in sexual activity and which is produced for the purposes of giving sexual gratification.
- (4) "Image" means an image produced by any means, whether of a real or imaginary subject.

(5) A person does not engage in relevant conduct merely by committing an offence prescribed for the purposes of this sub-paragraph.

(6) For the purposes of sub-paragraph (1)(d) and (e), IBB must have regard to guidance issued by the Secretary of State as to conduct which is inappropriate.

*Risk of harm*

11.—(1) This paragraph applies to a person if—

- (a) it appears to IBB that the person falls within sub-paragraph (4), and
- (b) IBB proposes to include him in the adults' barred list.

(2) IBB must give the person the opportunity to make representations as to why he should not be included in the adults' barred list.

(3) IBB must include the person in the adults' barred list if—

- (a) it is satisfied that the person falls within sub-paragraph (4), and
- (b) it appears to IBB that it is appropriate to include the person in the list.

(4) A person falls within this sub-paragraph if he may—

- (a) harm a vulnerable adult,
- (b) cause a vulnerable adult to be harmed,
- (c) put a vulnerable adult at risk of harm,
- (d) attempt to harm a vulnerable adult, or
- (e) incite another to harm a vulnerable adult.

*Restriction on inclusion*

12.—(1) IBB must not include a person in the adults' barred list—

- (a) only on a particular ground if a relevant Scottish authority has already considered whether the person should be included in a corresponding list on the same ground (whether or not it decided to include him in the list), or
- (b) if, in accordance with such criteria as the Secretary of State specifies by order, it is more appropriate for the person's case to be considered by the relevant Scottish authority.

(2) A relevant Scottish authority is such authority as the Secretary of State specifies by order as exercising for the purposes of the law of Scotland functions which correspond to those of IBB.

(3) A corresponding list is a list maintained for the purposes of the law of Scotland which the Secretary of State specifies by order as corresponding to the adults' barred list.

PART III

SUPPLEMENTARY

*Procedure*

13.—(1) IBB must ensure that in respect of any information it receives in relation to an individual from whatever source or of whatever nature it considers

whether the information is relevant to its consideration as to whether the individual should be included in each barred list.

(2) Sub-paragraph (1) does not, without more, require IBB to give an individual the opportunity to make representations as to why he should not be included in a barred list.

14. When an individual is included in a barred list IBB must take all reasonable steps to notify the individual of that fact.

15.—(1) The Secretary of State may, by regulations, make provision as to the procedure to be followed for the purposes of any decision IBB is required or authorised to take under this Schedule.

(2) Such provision may include provision as to the time within which anything is to be done.

### *Representations*

16.—(1) A person who is, by virtue of any provision of this Schedule, given an opportunity to make representations must have the opportunity to make representations in relation to all of the information on which IBB intends to rely in taking a decision under this Schedule.

(2) Any requirement of this Schedule to give a person an opportunity to make representations does not apply if IBB does not know and cannot reasonably ascertain the whereabouts of the person.

(3) The opportunity to make representations does not include the opportunity to make representations that findings of fact made by a competent body were wrongly made.

(4) Findings of fact made by a competent body are findings of fact made in proceedings before one of the following bodies or any of its committees—

- (a) the General Teaching Council for Northern Ireland
- (b) the Council of the Pharmaceutical Society of Northern Ireland;
- (c) the General Medical Council;
- (d) the General Dental Council;
- (e) the General Optical Council;
- (f) the General Osteopathic Council;
- (g) the General Chiropractic Council;
- (h) the Nursing and Midwifery Council;
- (i) the Health Professions Council;
- (j) the Northern Ireland Social Care Council.

(5) The Secretary of State may by order amend sub-paragraph (4) by inserting a paragraph or amending or omitting a paragraph for the time being contained in the sub-paragraph.

17.—(1) This paragraph applies to a person who is included in a barred list (except a person included in pursuance of paragraph 1 or 7) if, before he was included in the list, IBB was unable to ascertain his whereabouts.

(2) This paragraph also applies to such a person if—

- (a) he did not, before the end of any time prescribed for the purpose, make representations as to why he should not be included in the list, and
  - (b) IBB grants him permission to make such representations out of time.
- (3) If a person to whom this paragraph applies makes such representations after the prescribed time—
- (a) IBB must consider the representations, and
  - (b) if it thinks that it is not appropriate for the person to be included in the list concerned, it must remove him from the list.
- (4) For the purposes of this paragraph, it is immaterial that any representations mentioned in sub-paragraph (3) relate to a time after the person was included in the list concerned.

#### *Review*

- 18.—(1) A person who is included in a barred list may apply to IBB for a review of his inclusion.
- (2) An application for a review may be made only with the permission of IBB.
- (3) A person may apply for permission only if—
- (a) the application is made after the end of the minimum barred period, and
  - (b) in the prescribed period ending with the time when he applies for permission, he has made no other such application.
- (4) IBB must not grant permission unless it thinks—
- (a) that the person's circumstances have changed since he was included in the list or since he last applied for permission (as the case may be), and
  - (b) that the change is such that permission should be granted.
- (5) On a review of a person's inclusion, if IBB is satisfied that it is no longer appropriate for him to be included in the list it must remove him from it; otherwise it must dismiss the application.
- (6) The minimum barred period is the prescribed period beginning with such of the following as may be prescribed—
- (a) the date on which the person was first included in the list;
  - (b) the date on which any criterion prescribed for the purposes of paragraph 1, 2, 7 or 8 is first satisfied;
  - (c) where the person is included in the list on the grounds that he has been convicted of an offence in respect of which a sentence of imprisonment or detention was imposed, the date of his release;
  - (d) the date on which the person made any representations as to why he should not be included in the list.

#### *Information*

- 19.—(1) IBB may require—
- (a) any person who holds records of convictions or cautions for the use of police forces generally to provide to it any relevant information relating to a person to whom any of paragraphs 1 to 5 or 7 to 11 applies;

- (b) any person who holds such records to provide to it prescribed details of relevant matter (within the meaning of section 113A of the Police Act 1997 (c. 50)) relating to a person to whom any of those paragraphs apply;
- (c) the chief officer of a relevant police force to provide to it any such relevant information;
- (d) any person who holds information prescribed for the purposes of Article 28(8)(c) to provide to it any such information relating to a person to whom any of paragraphs 1 to 5 or 7 to 11 applies.

(2) For the purposes of sub-paragraph (1)(a), relevant information relating to a person is information which the person holding the records thinks might be relevant in relation to the regulated activity concerned.

(3) For the purposes of sub-paragraph (1)(c), relevant information relating to a person is information which the chief officer thinks might be relevant in relation to the regulated activity concerned.

(4) IBB must pay to the appropriate police authority such fee as the Secretary of State thinks appropriate for information provided to IBB in accordance with sub-paragraph (1)(c).

(5) For the purpose of deciding under this Schedule whether or not a person is included in a barred list IBB must not take account of relevant police information if the chief officer of the relevant police force thinks that it would not be in the interests of the prevention or detection of crime to disclose the information to the person.

(6) In sub-paragraph (5) relevant police information is information which falls within sub-paragraph (3), whether it is obtained by IBB in pursuance of sub-paragraph (1)(c) or paragraph 20(2).

(7) In this paragraph—

“caution” has the same meaning as in section 126 of the Police Act 1997 (c. 50);

“relevant police force” must be construed in accordance with subsection (9) of section 113B of that Act as if the person had made an application for the purposes of that section.

(8) If IBB so requests, the Secretary of State must inform IBB which police forces are relevant police forces in relation to a person.

20.—(1) The Department of Health, Social Services and Public Safety may provide to IBB any information relating to a person which is held by that Department in connection with its functions under Part II or III of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003.

(2) The Department of Education may provide to IBB any information relating to a person which is held by that Department in connection with its functions under Articles 70(2)(e)(iii) and 88A(2)(b)(iii) of the Education and Libraries (Northern Ireland) Order 1986 (NI 3).

(3) The Secretary of State must provide to IBB any information relating to a person which is held by him in connection with his functions under this Order (except information he holds relating to an offence prescribed for the purposes of paragraph 4(5) or 10(5) of this Schedule).

21. IBB must provide the Secretary of State with the prescribed information relating to a person if—

- (a) it includes that person in a barred list;
- (b) it is considering whether to include him in a barred list;
- (c) it thinks that any of the criteria prescribed for the purposes of paragraph 1, 2, 7 or 8 is satisfied in relation to him and that the Secretary of State does not already have the information.

22. The Secretary of State must inform the Scottish Ministers if a person is included in a barred list.

23. IBB may—

- (a) at the request of the Secretary of State provide him with such information relating to the exercise of its functions as IBB thinks may be relevant to the exercise by the Secretary of State of any of his functions;
- (b) at the request of a Northern Ireland department provide it with such information relating to the exercise of IBB's functions as IBB thinks may be relevant to the exercise by that Department of any of its functions.

*Prescribed criteria*

24.—(1) The criteria which may be prescribed for the purposes of paragraphs 1, 2, 7 and 8 are—

- (a) that a person has been convicted of, or cautioned in relation to, an offence of a specified description;
- (b) that an order of a specified description requiring the person to do or not to do anything has been made against him;
- (c) that a person is included in a specified list maintained for the purposes of a country or territory outside the United Kingdom;
- (d) that an order or direction of a specified description requiring the person to do or not to do anything has been made against him for the purposes of a country or territory outside the United Kingdom.

(2) The power to specify offences for the purposes of sub-paragraph (1) includes power to specify offences under—

- (a) the law of England and Wales, Scotland, the Channel Islands or the Isle of Man;
- (b) section 70 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18);
- (c) section 70 of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19);
- (d) section 42 of the Naval Discipline Act 1957 (c. 53);
- (e) section 42 of the Armed Forces Act 2006 (c. 52).

(3) The Secretary of State may specify a list for the purposes of sub-paragraph (1)(c) only if he thinks that inclusion in the list has a corresponding or similar effect to inclusion in a barred list.

(4) For the purposes of determining whether any of the criteria is satisfied in relation to a person, ignore—

- (a) any offence committed before he attained the age of 18;
- (b) any order or direction made before that time.

(5) The criteria which may be prescribed for the purposes of paragraph 1 or 2 must not consist only of circumstances in which the person has committed an offence against a child before the commencement of Article 6 if the court, having considered whether to make a disqualification order, decided not to.

(6) In sub-paragraph (5)—

(a) the reference to an offence committed against a child must be construed in accordance with Chapter II of Part II of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (NI 4);

(b) a disqualification order is an order under Article 23 or 24 of that Order.

(7) For the purposes of sub-paragraph (4) an offence committed over a period of time must be treated as committed on the last day of the period.

(8) For the purpose of considering whether the criteria apply to an individual, the Secretary of State must, from time to time, examine records of convictions or cautions held for the use of police forces generally.

(9) Sub-paragraph (8) does not apply to records of convictions made, or cautions given, before such date as is prescribed.

25. A court by or before which a person is convicted of an offence of a description specified for the purposes of paragraph 24(1)(a), or which makes an order of a description specified for the purposes of paragraph 24(1)(b), must inform the person at the time he is convicted or the order is made that IBB will include him in the barred list concerned.

## SCHEDULE 2

### REGULATED ACTIVITY

#### PART I

#### REGULATED ACTIVITY RELATING TO CHILDREN

##### *Regulated activity: general*

1.—(1) An activity is a regulated activity relating to children if—

(a) it is mentioned in paragraph 2(1), and

(b) it is carried out frequently by the same person or the period condition is satisfied.

(2) An activity is a regulated activity relating to children if—

(a) it is carried out frequently by the same person or the period condition is satisfied,

(b) it is carried out in an establishment mentioned in paragraph 3(1),

(c) it is carried out by a person while engaging in any form of work (whether or not for gain),

(d) it is carried out for or in connection with the purposes of the establishment, and

- (e) it gives that person the opportunity, in consequence of anything he is permitted or required to do in connection with the activity, to have contact with children.
- (3) Each of the following is a regulated activity relating to children—
- (a) acting as a child minder on domestic premises;
  - (b) providing day care.
- (4) Any expression used both in sub-paragraph (3) and in Part XI of the Children Order has the meaning given by that Order.
- (5) It is a regulated activity relating to children to foster a child (as mentioned in Article 55).
- (6) The exercise of a function of a guardian ad litem appointed under Article 60 of the Children Order is a regulated activity relating to children.
- (7) The exercise of a function of a person mentioned in paragraph 4(1) is a regulated activity relating to children.
- (8) The exercise of a function of any of the following so far as it relates to the inspection of an establishment mentioned in paragraph 3(1) is a regulated activity relating to children—
- (a) an inspector appointed under Article 102 of the Education and Libraries (Northern Ireland) Order 1986;
  - (b) the Chief Inspector of Criminal Justice in Northern Ireland;
  - (c) the Regulation and Improvement Authority.
- (9) The exercise of a function of the Regulation and Improvement Authority so far as it relates to the inspection of an establishment, agency or body falling within sub-paragraph (10) is a regulated activity relating to children.
- (10) An establishment, agency or body falls within this sub-paragraph if it is—
- (a) an establishment in relation to which a requirement to register arises under Article 12 of the 2003 Order,
  - (b) an agency in relation to which such a requirement arises, or
  - (c) an HSS body,
- and it provides any form of treatment or therapy for children.
- (11) In sub-paragraph (10)(c) the reference to an HSS body includes a reference to any person who provides, or is to provide, health care for the body (wherever the health care is or is to be provided).
- (12) Any activity which consists in or involves on a regular basis the day to day management or supervision of a person carrying out an activity mentioned in sub-paragraph (1), (2), (6), (8) or (9) is a regulated activity relating to children.

#### *Activities*

- 2.—(1) The activities referred to in paragraph 1(1) are—
- (a) any form of teaching, training or instruction of children, unless the teaching, training or instruction is merely incidental to teaching, training or instruction of persons who are not children;



- (b) any form of care for or supervision of children, unless the care or supervision is merely incidental to care for or supervision of persons who are not children;
  - (c) any form of advice or guidance provided wholly or mainly for children, if the advice or guidance relates to their physical, emotional or educational well-being;
  - (d) any form of treatment or therapy provided for a child;
  - (e) moderating a public electronic interactive communication service which is likely to be used wholly or mainly by children;
  - (f) driving a vehicle which is being used only for the purpose of conveying children and any person supervising or caring for the children pursuant to arrangements made in prescribed circumstances.
- (2) Sub-paragraph (1)(a), (b), (c) and (d) do not include—
- (a) teaching, training or instruction provided to a child in the course of his employment;
  - (b) care for or supervision of a child in the course of his employment;
  - (c) advice or guidance provided for a child in the course of his employment;
  - (d) treatment or therapy provided for a child in the course of his employment.
- (3) Sub-paragraph (2) does not apply if—
- (a) the child has not attained the age of 16, and
  - (b) the activity is carried out by a person in respect of whom arrangements exist principally for that purpose.
- (4) For the purposes of sub-paragraph (1)(e) a person moderates a public electronic interactive communication service if, for the purpose of protecting children, he has any function relating to—
- (a) monitoring the content of matter which forms any part of the service,
  - (b) removing matter from, or preventing the addition of matter to, the service, or
  - (c) controlling access to, or use of, the service.
- (5) But a person does not moderate a public electronic interactive communications service as mentioned in sub-paragraph (4)(b) or (c) unless he has—
- (a) access to the content of the matter;
  - (b) contact with users of the service.
- (6) In sub-paragraph (2) employment includes any form of work which is carried out under the supervision or control of another, whether or not the person carrying it out is paid for doing so.

*Establishments*

- 3.—(1) The establishments referred to in paragraph 1(2) and (8) are—
- (a) an educational institution which is exclusively or mainly for the provision of full-time education to children;
  - (b) a nursery school within the meaning of the Education and Libraries (Northern Ireland) Order 1986 (NI 3);

- (c) a hospital which is exclusively or mainly for the reception and treatment of children;
- (d) an institution which is exclusively or mainly for the detention of children;
- (e) a children's home (within the meaning of Article 9 of the 2003 Order);
- (f) relevant childcare premises.

(2) Relevant childcare premises are any part of premises on which a person acts as child minder or provides day care in respect of which he must be registered under Article 118 of the Children Order.

#### *Positions*

4.—(1) The persons referred to in paragraph 1(7) are—

- (a) member of the governing body of an educational establishment mentioned in Article 12(5);
- (b) member of an HSS body;
- (c) director of social services of a Health and Social Services Board ;
- (d) director of a Health and Social Services trust responsible for the delivery of personal social services;
- (e) member of an education and library board;
- (f) chief education officer of an education and library board;
- (g) charity trustee of a children's charity;
- (h) Commissioner for Children and Young People for Northern Ireland;
- (i) a controller appointed in respect of a child under Article 101 of the Mental Health (Northern Ireland) Order 1986 (NI 4);
- (j) member, chief executive or member of staff of IBB.

(2) A charity is a children's charity if the individuals who are workers for the charity normally include individuals engaging in regulated activity relating to children.

(3) An individual is a worker for a charity if he does work under arrangements made by the charity; but the arrangements referred to in this sub-paragraph do not include any arrangements made for purposes which are merely incidental to the purposes for which the charity is established.

5. A person who is part of a group in relation to which another (P) engages in regulated activity relating to children does not engage in regulated activity only because he assists P or does anything on behalf of or under the direction of P which, but for this paragraph, would amount to engaging in regulated activity relating to children.

#### *Exceptions*

6. The Secretary of State may, by order, provide that in such circumstances as are specified an activity which is a regulated activity in relation to children is not to be treated as a regulated activity.

## PART II

## REGULATED ACTIVITY RELATING TO VULNERABLE ADULTS

7.—(1) Each of the following is a regulated activity relating to vulnerable adults if it is carried out frequently by the same person or the period condition is satisfied—

- (a) any form of training, teaching or instruction provided wholly or mainly for vulnerable adults;
- (b) any form of care for or supervision of vulnerable adults;
- (c) any form of assistance, advice or guidance provided wholly or mainly for vulnerable adults;
- (d) any form of treatment or therapy provided for a vulnerable adult;
- (e) moderating a public electronic interactive communication service which is likely to be used wholly or mainly by vulnerable adults;
- (f) driving a vehicle which is being used only for the purpose of conveying vulnerable adults and any person caring for the vulnerable adults pursuant to arrangements made in prescribed circumstances;
- (g) anything done on behalf of a vulnerable adult in such circumstances as are prescribed.

(2) For the purposes of sub-paragraph (1)(e) a person moderates a public electronic interactive communication service if, for the purpose of protecting vulnerable adults, he has any function relating to—

- (a) monitoring the content of matter which forms any part of the service,
- (b) removing matter from, or preventing the addition of matter to, the service,  
or
- (c) controlling access to, or use of, the service.

(3) But a person does not moderate a public electronic interactive communications service as mentioned in sub-paragraph (2)(b) or (c) unless he has—

- (a) access to the content of the matter;
- (b) contact with users of the service.

(4) An activity carried out in a residential care home or nursing home (for the purposes of the 2003 Order) which is exclusively or mainly for vulnerable adults is a regulated activity relating to vulnerable adults if—

- (a) it is carried out at the establishment frequently by the same person or the period condition is satisfied,
- (b) it is carried out by a person while engaging in any form of work (whether or not for gain),
- (c) it is carried out for or in connection with the purposes of the establishment, and
- (d) it gives that person the opportunity, in consequence of anything he is permitted or required to do in connection with the activity, to have contact with vulnerable adults.

(5) Any activity which consists in or involves on a regular basis the day to day management or supervision of a person carrying out an activity mentioned in sub-paragraph (1) or (4) is a regulated activity relating to vulnerable adults.

(6) The exercise of the inspection functions of the Regulation and Improvement Authority is a regulated activity relating to vulnerable adults.

(7) Inspection functions are functions relating to the inspection of—

- (a) an HSS body,
- (b) an establishment in relation to which a requirement to register arises under Article 12 of the 2003 Order, or
- (c) an agency in relation to which such a requirement arises,

in so far as the inspection relates to personal social services, care, treatment or therapy provided for vulnerable adults by the body, establishment or agency.

(8) In sub-paragraph (7)(a) the reference to an HSS body includes a reference to any person who provides, or is to provide, health care for the body (wherever the health care is or is to be provided).

(9) The exercise of a function of a person mentioned in paragraph 8(1) is a regulated activity relating to vulnerable adults.

(10) A person who is part of a group in relation to which another (P) engages in regulated activity relating to vulnerable adults does not engage in regulated activity only because he assists P or does anything on behalf of or under the direction of P which, but for this sub-paragraph, would amount to engaging in regulated activity relating to vulnerable adults.

8.—(1) The persons referred to in paragraph 7(9) are—

- (a) member of an HSS body;
- (b) director of social services of a Health and Social Services Board ;
- (c) director of a Health and Social Services trust responsible for the delivery of personal social services;
- (d) charity trustee of vulnerable adults' charity;
- (e) member or chief executive or member of staff of IBB.

(2) A charity is a vulnerable adults' charity if the individuals who are workers for the charity normally include individuals engaging in regulated activity relating to vulnerable adults.

(3) An individual is a worker for a charity if he does work under arrangements made by the charity; but the arrangements referred to in this sub-paragraph do not include any arrangements made for purposes which are merely incidental to the purposes for which the charity is established.

9. The Secretary of State may, by order, provide that in such circumstances as are specified an activity which is a regulated activity in relation to vulnerable adults is not to be treated as a regulated activity.

PART III

THE PERIOD CONDITION

10.—(1) The period condition is satisfied if the person carrying out the activity does so at any time on more than two days in any period of 30 days.

(2) In relation to an activity that falls within paragraph 2(1)(a), (b), (c) or (d) or 7(1)(a), (b), (c), (d) or (g), the period condition is also satisfied if—

- (a) the person carrying out the activity does so at any time between 2 a.m. and 6 a.m, and
- (b) the activity gives the person the opportunity to have face-to-face contact with children or vulnerable adults (as the case may be).

SCHEDULE 3

APPROPRIATE VERIFICATION

PART I

DEFAULT POSITION

1.—(1) A regulated activity provider obtains an appropriate verification in accordance with this Part if, during the prescribed period—

- (a) he obtains relevant information relating to B in pursuance of an application under Article 32, or
- (b) he obtains a copy of an enhanced criminal record certificate relating to B issued in relation to the regulated activity provider.

(2) “Relevant information” means—

- (a) in relation to regulated activity relating to children, relevant information relating to children (within the meaning of Article 33);
- (b) in relation to regulated activity relating to vulnerable adults, relevant information relating to vulnerable adults (within the meaning of Article 33).

2.—(1) A regulated activity provider obtains an appropriate verification in accordance with this Part if—

- (a) an enhanced criminal record certificate relating to B is issued during the prescribed period,
- (b) the application for the certificate is countersigned on behalf of the regulated activity provider by a registered person (within the meaning of Part 5 of the Police Act 1997 (c. 50)), and
- (c) the regulated activity provider obtains from the registered person the information mentioned in sub-paragraph (2) derived from the certificate.

(2) The information is—

- (a) whether B is subject to monitoring, and

- (b) whether IBB is considering whether to include B in a barred list in pursuance of paragraph 3 or 5 or (as the case may be) 9 or 11 of Schedule 1.

3.—(1) This paragraph applies if—

- (a) a regulated activity provider permits B to engage in an activity that is regulated activity,
- (b) B engages in the activity with the permission of that and another regulated activity provider (C), and
- (c) the permission mentioned in paragraph (a) does not have continuous effect for a period exceeding the prescribed period.

(2) The regulated activity provider mentioned in sub-paragraph (1)(a) obtains an appropriate verification in accordance with this Part if, during the prescribed period, he obtains written confirmation from C—

- (a) that C is appropriately registered in relation to B,
- (b) that C has no reason to believe that B is barred from the activity, and
- (c) that C has no reason to believe that B is not subject to monitoring in relation to the activity.

4.—(1) This paragraph applies if—

- (a) a regulated activity provider permits B to engage in regulated activity,
- (b) B is supplied by a personnel supplier, and
- (c) the permission does not have continuous effect for a period exceeding the prescribed period.

(2) The regulated activity provider obtains an appropriate verification in accordance with this Part if, during the prescribed period, he obtains written confirmation from the personnel supplier—

- (a) that the personnel supplier is appropriately registered in relation to B,
- (b) that the personnel supplier has no reason to believe that B is barred from the activity, and
- (c) that the personnel supplier has no reason to believe that B is not subject to monitoring in relation to the activity.

## PART II

### PRESCRIBED VERIFICATION

5. A regulated activity provider obtains an appropriate verification in accordance with this Part if, during the prescribed period—

- (a) he ascertains in the prescribed manner whether B is subject to monitoring in relation to the activity, and
- (b) he takes prescribed steps to have an enhanced criminal record certificate relating to B issued in relation to him.

6.—(1) This paragraph applies if—

- (a) a regulated activity provider permits B to engage in an activity that is regulated activity,

- (b) B engages in the activity with the permission of that and another regulated activity provider (C), and
  - (c) the permission mentioned in paragraph (a) does not have continuous effect for a period exceeding the prescribed period.
- (2) The regulated activity provider mentioned in sub-paragraph (1)(a) obtains an appropriate verification in accordance with this Part if he obtains from C—
- (a) a copy of an enhanced criminal record certificate relating to B issued in relation to C during the prescribed period, and
  - (b) the confirmation mentioned in sub-paragraph (3) during the prescribed period.
- (3) The confirmation is written confirmation—
- (a) that C is appropriately registered in relation to B,
  - (b) that C has no reason to believe that B is barred from the activity,
  - (c) that C has no reason to believe that B is not subject to monitoring in relation to the activity, and
  - (d) that no information has been disclosed to C in pursuance of section 113B(6)(b) of the Police Act 1997 (c. 50) in connection with the enhanced criminal record certificate.
- 7.—(1) This paragraph applies if—
- (a) a regulated activity provider permits B to engage in regulated activity,
  - (b) B is supplied by a personnel supplier, and
  - (c) the permission does not have continuous effect for a period exceeding the prescribed period.
- (2) The regulated activity provider obtains an appropriate verification in accordance with this Part if he obtains from the personnel supplier—
- (a) a copy of an enhanced criminal record certificate relating to B issued in relation to the personnel supplier during the prescribed period, and
  - (b) the confirmation mentioned in sub-paragraph (3) during the prescribed period.
- (3) The confirmation is written confirmation—
- (a) that the personnel supplier is appropriately registered in relation to B,
  - (b) that the personnel supplier has no reason to believe that B is barred from the activity,
  - (c) that the personnel supplier has no reason to believe that B is not subject to monitoring in relation to the activity, and
  - (d) that no information has been disclosed to the personnel supplier in pursuance of section 113B(6)(b) of the Police Act 1997 (c. 50) in connection with the enhanced criminal record certificate.

## PART III

## PRESCRIBED VERIFICATION

8. A regulated activity provider obtains an appropriate verification in accordance with this Part if, during the prescribed period, he obtains a copy of an enhanced criminal record certificate relating to B issued in relation to the regulated activity provider.

9.—(1) This paragraph applies if—

- (a) a regulated activity provider permits B to engage in an activity that is regulated activity,
- (b) B engages in the activity with the permission of that and another regulated activity provider (C), and
- (c) the permission mentioned in paragraph (a) does not have continuous effect for a period exceeding the prescribed period.

(2) The regulated activity provider mentioned in sub-paragraph (1)(a) obtains an appropriate verification in accordance with this Part if he obtains from C—

- (a) a copy of an enhanced criminal record certificate relating to B issued in relation to C during the prescribed period, and
- (b) the confirmation mentioned in sub-paragraph (3) during the prescribed period.

(3) The confirmation is written confirmation—

- (a) that C is appropriately registered in relation to B,
- (b) that C has no reason to believe that B is barred from the activity,
- (c) that C has no reason to believe that B is not subject to monitoring in relation to the activity, and
- (d) that no information has been disclosed to C in pursuance of section 113B(6)(b) of the Police Act 1997 in connection with the enhanced criminal record certificate.

10.—(1) This paragraph applies if—

- (a) a regulated activity provider permits B to engage in regulated activity,
- (b) B is supplied by a personnel supplier, and
- (c) the permission does not have continuous effect for a period exceeding the prescribed period.

(2) The regulated activity provider obtains an appropriate verification in accordance with this Part if he obtains from the personnel supplier—

- (a) a copy of an enhanced criminal record certificate relating to B issued in relation to the personnel supplier during the prescribed period, and
- (b) the confirmation mentioned in sub-paragraph (3) during the prescribed period.

(3) The confirmation is written confirmation—

- (a) that the personnel supplier is appropriately registered in relation to B,
- (b) that the personnel supplier has no reason to believe that B is barred from the activity,



- (c) that the personnel supplier has no reason to believe that B is not subject to monitoring in relation to the activity, and
- (d) that no information has been disclosed to the personnel supplier in pursuance of section 113B(6)(b) of the Police Act 1997 (c. 50) in connection with the enhanced criminal record certificate.

#### PART IV

##### DEFINITIONS AND POWER TO AMEND

11. In this Schedule “enhanced criminal record certificate” means—
- (a) in relation to regulated activity relating to children, an enhanced criminal record certificate issued under the Police Act 1997 containing suitability information relating to children (within the meaning of section 113BA of that Act);
  - (b) in relation to regulated activity relating to vulnerable adults, an enhanced criminal record certificate issued under that Act containing suitability information relating to vulnerable adults (within the meaning of Article 113BB of that Act).
12. For the purposes of this Schedule an enhanced criminal record certificate is issued in relation to a regulated activity provider, or personnel supplier, only if—
- (a) he countersigned the application for the certificate as a registered person for the purposes of Part 5 of the Police Act 1997, or
  - (b) the application was countersigned on his behalf by such a person.
13. For the purposes of this Schedule a regulated activity provider, or personnel supplier, is “appropriately registered” in relation to B if—
- (a) he is registered in relation to B under Article 34,
  - (b) his registration relates to monitoring in relation to the activity that he has permitted or supplied B to engage in, and
  - (c) he has notified the Secretary of State of the address to which communications are to be sent in connection with his registration.
14. The Secretary of State may by order amend the preceding provisions of this Schedule for the purpose of altering what constitutes obtaining an appropriate verification.

#### SCHEDULE 4

##### EMPLOYMENT BUSINESSES: FAILURE TO CHECK

###### *Offences*

- 1.—(1) A person (P) who carries on an employment business commits an offence if—
- (a) he supplies an individual (B) to another person in the course of that business,
  - (b) he knows or has reason to believe that the other person will permit B to engage in regulated activity, and

- (c) he is not appropriately registered in relation to B.
  - (2) P is appropriately registered in relation to B if—
    - (a) he is registered in relation to B under Article 34,
    - (b) his registration relates to monitoring in relation to the activity, and
    - (c) he has notified the Secretary of State of the address to which communications are to be sent in connection with his registration.
  - (3) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- 2.—(1) In such circumstances as are prescribed, a person (P) who carries on an employment business commits an offence if—
- (a) he supplies an individual (B) to another person in the course of that business,
  - (b) he knows or has reason to believe that the other person will permit B to engage in regulated activity, and
  - (c) he fails to obtain a copy of an enhanced criminal record certificate relating to B issued in relation to P during the prescribed period.
- (2) For these purposes “enhanced criminal record certificate” means—
- (a) in relation to regulated activity relating to children, an enhanced criminal record certificate issued under the Police Act 1997 (c. 50) containing suitability information relating to children (within the meaning of section 113BA of that Act);
  - (b) in relation to regulated activity relating to vulnerable adults, an enhanced criminal record certificate issued under that Act containing suitability information relating to vulnerable adults (within the meaning of section 113BB of that Act).
- (3) An enhanced criminal record certificate is issued in relation to P only if —
- (a) he countersigned the application for the certificate as a registered person for the purposes of Part 5 of the Police Act 1997 Act, or
  - (b) the application was countersigned on his behalf by such a person.
- (4) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### *Defences*

- 3.—(1) P does not commit an offence under paragraph 1 or 2 if the regulated activity—
- (a) is regulated activity relating to vulnerable adults, and
  - (b) falls within Article 20.
- (2) P does not commit an offence under paragraph 1 or 2 in relation to any period during which B is continuously supplied to another if the period begins before the commencement of this Schedule.
- (3) Sub-paragraph (2) does not apply in relation to a period falling after such date as the Secretary of State specifies by order.

*Modified meaning of regulated activity*

4. For the purposes of this Schedule, Schedule 2 is modified as follows—
- (a) in paragraph 1, sub-paragraphs (1)(b) and (2)(a) must be disregarded;
  - (b) in paragraph 7(1), the words “if it is carried out frequently by the same person or the period condition is satisfied” must be disregarded;
  - (c) in paragraph 7(4), paragraph (a) must be disregarded.

*Power to amend paragraph 2(1)(c)*

5. The Secretary of State may by order amend paragraph 2(1)(c) for the purpose of requiring an employment business to carry out such checks in relation to B as may be specified.

*Offence: acting for P etc*

6. If the commission of an offence under paragraph 1 or 2 is due to the act or reckless default of a person who acts for or appears to act for P—
- (a) that person is guilty of the offence, and
  - (b) he may be proceeded against and punished whether or not proceedings are also taken against P.

Article 32

## SCHEDULE 5

## VETTING INFORMATION

1. This is the table referred to in Articles 32 and 34—

<i>Column 1</i>	<i>Column 2</i>
1. Person who permits, or is considering whether to permit, B to engage in regulated activity relating to children	Children
2. Person who permits, or is considering whether to permit, B to engage in regulated activity relating to vulnerable adults	Vulnerable adults
3. Person who permits, or is considering whether to permit B to engage in controlled activity relating to children	Children
4. Person who permits, or is considering whether to permit, B to engage in controlled activity relating to vulnerable adults	Vulnerable adults
5. Personnel supplier in connection with the supply, or possible supply, of B to another person for B to engage in regulated activity relating to children	Children
6. Personnel supplier in connection with the supply, or possible supply, of	Vulnerable adults

B to another person for B to engage in regulated activity relating to vulnerable adults	
7. Personnel supplier in connection with the supply, or possible supply, of B to another person for B to engage in controlled activity relating to children	Children
8. Personnel supplier in connection with the supply, or possible supply, of B to another person for B to engage in controlled activity relating to vulnerable adults	Vulnerable adults
9. Person who has parental responsibility for a child and is considering whether B is suitable to engage in regulated activity in relation to the child, but not if B is permitted to do so by an independent regulated activity provider	Children
10. Parent who is considering whether B should be a private foster parent (within the meaning of Article 55 in relation to his child	Children
11. Person (except the parent of a child to be fostered) making or who has made arrangements for another to foster a child who is considering whether B is suitable to live in premises in which the child is fostered	Children
12. An authority (within the meaning of the Children Order) in the exercise of functions under Article 108 of that Order considering whether B is suitable— (a) to foster a child privately (within the meaning of that Order); (b) to live in premises in which a child is so fostered	Children
13. Person who is considering whether B is suitable to engage in regulated activity in relation to a vulnerable adult who is a friend or family member of the person, but not if B is permitted to do so by an independent regulated activity provider	Vulnerable adults
14. Person who carries on an adult placement scheme and is considering whether B is suitable to live in premises in which an adult is provided with accommodation as part of the scheme	Vulnerable adults

15. Person who is permitting, or considering whether to permit, B to have access to health or educational records relating to a child	Children
16. Person who is permitting, or considering whether to permit, B to have access to health records relating to vulnerable adults	Vulnerable adults
17. Appropriate officer (within the meaning of Article 17) who is required to obtain relevant information relating to B	Children
18. Person who is permitting, or is considering whether to permit, B to engage in an activity in respect of which financial resources are provided pursuant to Article 4(2)(a) of the Further Education (Northern Ireland) Order 1997 (NI 15) or section 1 of the Employment and Training Act (Northern Ireland) 1950 (c.29), if engaging in the activity gives B the opportunity to have contact with children	Children
19. Person of a prescribed description who is performing a prescribed function in connection with B in such circumstances as are prescribed	(a) Children (if prescribed for the purposes of this entry); (b) Vulnerable adults (if prescribed for the purposes of this entry)

2. The Secretary of State may by order amend any of entries 1 to 18 in column 1 of the table.

3.—(1) In entries 1 and 5 in the table the reference to regulated activity must be construed by disregarding sub-paragraph (2) of paragraph 2 of Schedule 2 if the activity—

- (a) relates to a child who has not attained the age of 16, or
- (b) is carried on for the purposes of the armed forces of the Crown.

(2) In entries 1, 2, 5, 6, 9 and 13 in the table the reference to regulated activity includes a reference to an activity which would be a regulated activity if—

- (a) it were carried out frequently, or
- (b) it were not merely incidental to another activity.

(3) In entries 3, 4, 7 and 8 in the table the reference to controlled activity includes a reference to an activity which would be a controlled activity if it were carried out frequently.

4. Parental responsibility has the same meaning as in the Children Order.

5. A regulated activity provider is an independent regulated activity provider unless it is a company wholly owned by B.

6. An adult placement scheme is a scheme—

- (a) under which an individual agrees with the person carrying on the scheme to provide accommodation, in the home in which the individual ordinarily resides, to an adult who is in need of it, and
- (b) in respect of which a requirement to register arises under Article 12 of the 2003 Order.

## SCHEDULE 6

## TRANSITIONAL PROVISIONS

*Advice by IBB*

1.—(1) IBB must provide the Department of Health, Social Services and Public Safety with such advice as it requests in connection with any decision in relation to the inclusion of a person in a list kept under Article 3 or 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (NI 4).

(2) IBB must provide the Department of Education with such advice as it requests in connection with any decision in relation to the inclusion of a person in a list kept for the purposes of Article 70(2)(e)(iii) or 88A(2)(b)(iii) of the Education and Libraries (Northern Ireland) Order 1986 (NI 3).

*Existing restrictions relating to children*

2.—(1) This paragraph applies to a person who is—

- (a) included in the list kept under Article 3 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (NI 4) (individuals considered unsuitable to work with children);
- (b) disqualified from working with children by virtue of an order of the court under Article 23 or 24 of that Order;
- (c) included in the list kept under Article 70(2)(e)(iii) or 88A(2)(b)(iii) of the Education and Libraries (Northern Ireland) Order 1986 (NI 3) (prohibition from teaching etc).

(2) The Secretary of State may, by order, make such provision as he thinks appropriate—

- (a) requiring IBB to include the person in the children's barred list;
  - (b) requiring IBB to consider including the person in the children's barred list;
  - (c) as to circumstances in which the person may make representations to IBB and the time at which such representations may be made;
  - (d) modifying the provisions of this Order so as to enable the person to engage in regulated activity of such description as is specified in the order in such circumstances as are so specified;
  - (e) modifying anything done under paragraph 15 or in paragraphs 16 to 21 of Schedule 1 in connection with IBB's consideration of any matter relating to the person.
- (3) An order under this paragraph may contain provision—
- (a) enabling the General Teaching Council for Northern Ireland to make determinations on an application by a person who has ceased to be subject

to a decision under Article 70(2)(e)(iii) of the Education and Libraries (Northern Ireland) Order 1986 (NI 3) in relation to his eligibility for registration under Article 35 of the Education (Northern Ireland) Order 1998 (NI 13);

- (b) for the Secretary of State to prescribe by regulations the procedure in relation to an application as mentioned in paragraph (a).

*Existing restrictions relating to vulnerable adults*

3.—(1) This paragraph applies to a person who is included in the list kept under Article 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (NI 14) (individuals considered unsuitable to work with certain adults).

(2) The Secretary of State may, by order, make such provision as he thinks appropriate—

- (a) requiring IBB to include the person in the adults' barred list;
- (b) requiring IBB to consider including the person in the adults' barred list;
- (c) as to circumstances in which the person may make representations to IBB and the time at which such representations may be made;
- (d) modifying the provisions of this Order so as to enable the person to engage in regulated activity of such description as is specified in the order in such circumstances as are so specified;
- (e) modifying anything done under paragraph 15 or in paragraphs 16 to 21 of Schedule 1 in connection with IBB's consideration of any matter relating to the person.

*Existing restrictions: supplementary*

4. An order under paragraph 2 or 3 may—

- (a) modify any criminal offence created by this Order;
- (b) create any new criminal offence,

but the penalty for an offence created by virtue of this paragraph must not exceed level 5 on the standard scale.

*Modifications relating to monitoring*

5.—(1) The Secretary of State may by order provide that in relation to permission to engage in regulated activity having effect during the transitional period, references in Article 15(1) and (2) to ascertaining whether B is subject to monitoring in relation to an activity have effect as references to ascertaining whether B is barred from that activity.

(2) The transitional period is the period—

- (a) beginning with the commencement of Article 6, and
- (b) ending with the commencement of Article 28.

## SCHEDULE 7

Article 60

### AMENDMENTS

#### *The Children (Northern Ireland) Order 1995 (NI 2)*

1.—(1) In Article 109 (persons disqualified from being private foster parents) after paragraph (3) insert—

“(3A) A person shall not foster a child privately if—

- (a) he is barred from regulated activity relating to children (within the meaning of Article 7(2) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007); or
- (b) he lives in the same household as a person who is barred from such activity.”.

(2) In Article 122 (persons disqualified for registration in respect of child minding and day care), after paragraph (2)(f) insert—

“(fa) he is barred from regulated activity relating to children (within the meaning of Article 7(2) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007);”.

#### *The Education and Libraries (Northern Ireland) Order 1986 (NI 3)*

2.—(1) In Article 70(2)(e) (regulations for prohibiting or restricting employment of teachers) for the words from “(i) on medical grounds” to the end substitute “on medical grounds, on grounds of misconduct or on educational grounds”.

(2) In Article 88A(2)(b) (regulations for prohibiting or restricting employment of non-teaching staff) for the words from “(i) on medical grounds” to the end substitute “on medical grounds or on grounds of misconduct”.

#### *The Police Act 1997 (c. 50)*

3. In section 126 after subsection (2) add—

“(3) In the application of this Part to Northern Ireland a reference to the Safeguarding Vulnerable Groups Act 2006, or to a provision of that Act, shall be construed as a reference to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 or, as the case maybe, to the corresponding provision of that Order.”.

#### *The Data Protection Act 1998 (c. 29)*

4.—(1) In section 56 (prohibition of requirement as to production of certain records) in the table in subsection (6) after “the Safeguarding Vulnerable Groups Act 2006” (where it twice occurs) insert “or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007”.

(2) In section 75 (commencement etc.) in subsection (4A)—

- (a) in paragraph (a) after “the Safeguarding Vulnerable Groups Act 2006” insert “or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007”; and
- (b) in paragraph (b) after “that Act” insert “or that Order”.



*The Health and Personal Social Services Act (Northern Ireland) 2001(c. 3)*

5. In section 5 after subsection (3) add—

“(4) For the purposes of subsection (1)(a), in considering whether a person is of good character, the Council may have regard to whether he is included in a barred list (within the meaning of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007).”

Article 60

## SCHEDULE 8

## REPEALS

Short Title	Extent of repeal
The Police Act 1997 (c.50)	Sections 113C to 113F.
The Criminal Justice and Courts Services Act 2000 (c.43)	Sections 35 and 36.
The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (NI 4)	The whole Order.
The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (NI 9)	In Schedule 4, the amendments to the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003.
The Serious Organised Crime and Police Act 2005 (c.15)	In Schedule 14, paragraph 2.

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes provision in connection with the protection of children and vulnerable adults. It is made only for purposes corresponding to those of the Safeguarding Vulnerable Groups Act 2006 (c.47).

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