

Draft Order laid before Parliament under section 61(3) of the Safeguarding Vulnerable Groups Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No.

**CHILDREN AND YOUNG
PERSONS, ENGLAND AND WALES
PROTECTION OF VULNERABLE
ADULTS, ENGLAND AND WALES**

The Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Devolution and Miscellaneous Provisions) Order 2010

Made - - - - - *2010*

Coming into force in accordance with Article 1

The Secretary of State for Children, Schools and Families makes the following Order in exercise of the powers conferred by sections 5(3), 21(12), 54(1) and 64(1)(a), (2)(a) and (c) and (3) of the Safeguarding Vulnerable Groups Act 2006⁽¹⁾.

In accordance with section 56(3)(a), (c) and (o) of that Act, the Secretary of State has consulted the Welsh Ministers.

A draft of this Order was laid before Parliament in accordance with section 61(3) of that Act and approved by resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Devolution and Miscellaneous Provisions) Order 2010 and comes into force on the day after the day it is made.

(2) In this Order “the Act” means the Safeguarding Vulnerable Groups Act 2006.

Regulated activity: children

2. Part 1 of Schedule 4 to the Act (regulated activity relating to children) is amended in accordance with Articles 3 to 5.

(1) 2006 c. 47.

3.—(1) Paragraph 1 (general) is amended as follows.

(2) After sub-paragraph (9) insert—

“(9A) The exercise of a function so far as the function—

- (a) relates to any of the matters mentioned in sub-paragraph (9B),
- (b) gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in the exercise of that function, to have contact with children, and
- (c) is not a function which falls within sub-paragraph (9C),

is a regulated activity relating to children.

(9B) The matters in this sub-paragraph are—

- (a) an inspection under section 10B of the Employment and Training Act 1973(2) (inspection of careers services in England);
- (b) the exercise of a power under section 79U(3) of the Children Act 1989(3) (powers of inspection etc on entry onto childminding or day care premises in Wales or premises on which childminding or day care is suspected to be taking place);
- (c) any step taken for the purposes of section 87(3) of that Act(4) (welfare of children in boarding schools and colleges);
- (d) an inspection under section 87(6) of that Act (inspection of boarding school or college);
- (e) any step taken by a person appointed under section 87A(1) of that Act(5) (appointment as an inspector of boarding schools and colleges)—
 - (i) for the purposes of an agreement made in accordance with section 87A(2) of that Act, or
 - (ii) in order to comply with any requirement imposed on the person under section 87B of that Act(6);
- (f) an inspection under section 18B or 18C of the Education Act 1994(7) (inspection of teacher training);

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- (2) 1973 c. 50. Section 10B was inserted by section 122 of the Learning and Skills Act 2000 (c. 21) and was amended by the Education Act 2005 (c. 18), Schedule 9, paragraphs 2(1) to (3) and by the Education and Inspections Act 2006 (c. 40), Schedule 14, paragraph 4(a) to (c) and Schedule 18, Part 5.
 - (3) 1989 c. 41. Section 79U was inserted by the Care Standards Act 2000 (c. 14), section 79(1) and was amended by the Education Act 2002 (c. 32), Schedule 13, paragraphs 5(1), (2), (5), (6) and (7) and Schedule 22, Part 3 and by the Childcare Act 2006 (c. 21), Schedule 2, paragraph 6 and Schedule 3, Part 2.
 - (4) Section 87 was amended by the Care Standards Act 2000 (c. 14), section 105(1) to (4) and by the Education and Inspections Act 2006 (c. 40), Schedule 14, paragraphs 6 and 16. As originally enacted, functions under section 87 were conferred on local authorities and the Secretary of State. The functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred under S.I. 1999/672 to the National Assembly for Wales and, in accordance with the Government of Wales Act 2006 (c. 32), Schedule 11, paragraph 30, the functions of the Assembly are transferred to the Welsh Ministers. Section 105 of the Care Standards Act 2000 transferred the functions of local authorities under section 87, so far as exercisable in relation to England, to the National Care Standards Commission and, so far as exercisable in relation to Wales, to the National Assembly for Wales. The functions of the National Care Standards Commission were then transferred to the National Commission for Social Care Inspection by the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), section 110 and Schedule 9, paragraph 10(1) and (3) and these functions were further transferred to Her Majesty’s Chief Inspector for Education, Children’s Services and Skills by the 2006 Act, Schedule 14, paragraphs 9, 16(1), (2) and (5) and Schedule 18, Part 5.
 - (5) Sections 87A and 87B were inserted by the Deregulation and Contracting Out Act 1994 (c. 40), section 38. Section 87A was substituted by the Care Standards Act 2000 (c. 14), section 106(1). Section 87B was amended by section 106(2) of the Care Standards Act 2000. The functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 and are now exercisable by the Welsh Ministers – see previous footnote.
 - (6) See footnote (d) above.
 - (7) 1994 c. 30. Sections 18A and 18B were inserted by the Education Act 2005 (c. 18), Schedule 14, paragraph 13. Section 18B was amended by the Education and Inspections Act 2006 (c. 40), Schedule 14, paragraph 19(1), (2), (3), (6) and (7) and the Education and Skills Act 2008 (c. 25), section 167.

- (g) an inspection under section 38 of the Education Act 1997(8) (inspection of local education authorities in Wales);
- (h) an inspection under section 31 of the Care Standards Act 2000(9) (inspections of establishments and agencies or the inspection of premises suspected as being used as an establishment or agency) of a residential family centre, a fostering agency, a voluntary adoption agency or an adoption support agency (each of which has the meaning given in section 4 of that Act(10));
- (i) an inspection under Part 4 of the Learning and Skills Act 2000(11) (inspection of education and training within the remit of Her Majesty's Chief Inspector of Education and Training in Wales);
- (j) a review or investigation under section 94 of the Health and Social Care (Community Health and Standards) Act 2003(12) (review or investigation of the discharge of social services functions by local authorities in Wales);
- (k) a review or investigation under section 94 of that Act as applied by section 30 of the Children Act 2004(13) (review or investigation of the functions of children's services authorities in Wales);
- (l) an inspection under section 28 of the Education Act 2005(14) (duty of Her Majesty's Chief Inspector of Education and Training in Wales to arrange regular inspections of certain schools);
- (m) an inspection under section 48 or 50 of that Act(15) (inspection of religious education);
- (n) an inspection under section 51 of that Act(16) (power of local education authorities to inspect maintained school for specific purpose);
- (o) an inspection under section 55 of that Act(17) (inspection of careers services in Wales);
- (p) the exercise of a power under section 77(4) of the Childcare Act 2006(18) (powers of inspection etc on entry onto premises in accordance with section 77 of that Act);
- (q) an inspection under section 118, 124, 125, 126 or 128 of the Education and Inspections Act 2006(19) (inspection of further education and training etc);

(8) 1997 c. 44. Section 38 was amended by the Children Act 2004 (c. 31), section 51 and the Education Act 2005 (c. 18), Schedule 9, paragraph 11. Further amendments were made by the Education and Inspections Act 2006 (c. 40), Schedule 14, paragraphs 20, 22(1) to (4) and Schedule 18, Part 5, the Childcare Act 2006 (c. 21), Schedule 2, paragraph 28 and the Learning and Skills Act 2000 (c. 21), section 73(1) and (3)(a). The functions of secretary of State under section 38 were transferred to the National Assembly for Wales under S.I. 1999/672 and subsequently transferred by the Government of Wales Act 2006 (c. 32), Schedule 11, paragraph 30.

(9) 2000 c. 14.

(10) Section 4 of the Care Standards Act 2000 (c. 14) was amended by the Adoption and Children Act 2002, section 8(3) and Schedule 3, paragraphs 103 and 104 and by the Health and Social Care Act 2008 (c. 14), Schedule 5, Part 1, paragraphs 1 and 5(1) to (3).

(11) 2000 c. 21. Part 4 of the Act was amended by S.I. 2005/3238 (amendments to sections 75, 77, 83 and 84) and by the Education Act 2005 (c. 18), Schedule 9, paragraphs 24 and 25 (amendments to sections 75 and 86 respectively) and section 81 was repealed by Schedule 19, Part 1 of that Act. Further amendments were made to section 82 by the Education and Inspections Act 2006 (c. 40), Schedule 14, paragraphs 55 and 57(1) to (5) and to section 83 by the Education Act 2002 (c. 32), section 178(1) and (4).

(12) 2003 c. 43.

(13) 2004 c. 31.

(14) 2005 c. 18. Section 28 was amended by S.I. 2005/3238 and is further amended by the Education and Skills Act 2008 (c. 25), Schedule 1, Part 1, paragraphs 25 and 27 but the amendments made by the 2008 Act are not yet in force.

(15) Sections 48 and 50 are extended to pupil referral units by S.I. 2007/1069 (Wales) and S.I. 2007/2979 (England).

(16) Section 51 is extended to pupil referral units by S.I. 2007/1069 (Wales) and S.I. 2007/2979.

(17) Section 55 is extended to pupil referral units by S.I. 2007/1069 (Wales) and S.I. 2007/2979.

(18) 2006 c. 21. Section 77 was amended by the Education and Inspections Act 2006 (c. 40), Schedule 14, paragraphs 108, 113(1) to (4) and Schedule 18, Part 5.

(19) 2006 c. 40.

- (r) an inspection under section 136 or a review under section 138 of that Act⁽²⁰⁾ (inspections and annual reviews of local authorities in England);
- (s) an inspection under section 143 of that Act (inspection of the functions of the Children and Family Court Advisory and Support Service);
- (t) an inspection under section 146 of that Act (inspection of secure training centres).

(9C) The exercise of a function to which sub-paragraph (10)⁽²¹⁾ applies so far as the function—

- (a) relates to the inspection of an establishment mentioned in paragraph 3(1)⁽²²⁾, and
- (b) gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in the exercise of that function, to have contact with children,

is a regulated activity relating to children.”

(3) In sub-paragraph (10) for “The exercise” to “children” substitute “This sub-paragraph applies to a function of”.

(4) For sub-paragraph (11)⁽²³⁾ substitute—

“(11) The exercise of a function of the Welsh Ministers so far as the function—

- (a) relates to the inspection of an establishment, agency or body falling within sub-paragraph (12), and
- (b) gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in the exercise of that function, to have contact with children,

is a regulated activity relating to children.”

(5) After sub-paragraph (12) insert—

“(12A) Accessing a database established in pursuance of section 12(1)(a) or (b) or 29(1)(a) or (b) of the Children Act 2004 (information databases) is a regulated activity relating to children.”

(6) In sub-paragraph (13A)⁽²⁴⁾ for “relates” to the end of paragraph (b) substitute—

- “(a) relates to the inspection of anything which is listed in section 60(1) of the Health and Social Care Act 2008⁽²⁵⁾ and involves the provision of any form of treatment or therapy for children, and
- (b) gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in the exercise of that function, to have contact with children.”.

(7) In sub-paragraph (14)⁽²⁶⁾ for “(10)” substitute “(9C)”.

4. In paragraph 3(1) (list of establishments)—

- (a) for “(10)” substitute “(9C)”, and
- (b) after paragraph (a) insert—

⁽²⁰⁾ By virtue of section 147(2), inspections under section 136 also include inspections of premises used by local authorities in connection with their fostering and adoption functions.

⁽²¹⁾ Sub-paragraph (10) was amended by the Education and Skills Act 2008 (c. 25), Schedule 1, Part 1, paragraphs 41(1) to (4) but the amendments are not yet in force. Amendments to this sub-paragraph were also made by the Health and Social Care Act 2008 (c. 14), Schedule 5, Part 3, Paragraphs 92(1) and (2) and Schedule 15, Part 1 and by S.I. 2009/2610.

⁽²²⁾ Paragraph 3(1) was amended by the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), section 200.

⁽²³⁾ Sub-paragraph (11) was amended by S.I. 2009/2610.

⁽²⁴⁾ Sub-paragraph (13A) was inserted by the Health and Social Care Act 2008 (c. 14), Schedule 5, Part 3, paragraphs 92(1) and (4).

⁽²⁵⁾ 2008 c. 14.

⁽²⁶⁾ Sub-paragraph (14) was amended by the Health and Social Care Act 2008 (c. 14), Schedule 5, Part 3, paragraphs 94(1) and (5).

“(aa) a school falling within section 19(2) or (2B) of the Education Act 1996(27) (pupil referral units etc) which does not fall within sub-paragraph (1)(a);”.

5.—(1) Paragraph 4(28) (office holders etc) is amended as follows.

(2) In sub-paragraph (1)—

(a) after paragraph (aa)(29) insert—

“(aaa) member of or clerk to a committee (established in accordance with regulations made under paragraph 15 of Schedule 1 to the Education Act 1996(30)) which acts as the management committee of a school falling within section 19(2) or (2B) of that Act (pupil referral units etc) which does not fall within sub-paragraph (1)(a);

(aab) an individual who is the proprietor of an independent school;

(aac) an individual who takes part in the management of an independent school;”

(b) in paragraph (p)(31) omit “wholly or mainly”, and

(c) after paragraph (r) insert—

“(s) member of a fostering panel;

(t) member of an adoption panel.”

(3) After sub-paragraph (1A)(32) insert—

“(1AA) For the purposes of sub-paragraph (1)(aaa), a person is a clerk to a committee if that person falls within the definition of a clerk to the committee in the regulations made under paragraph 15 of Schedule 1 to the Education Act 1996.”

(4) After sub-paragraph (6) insert—

“(6A) For the purposes of sub-paragraph (1)(s), a fostering panel is a panel established in accordance with regulations made under section 22(2) of the Care Standards Act 2000 (regulation of establishment or agencies) or regulations made under Part 3(33) or section 59(34) of the Children Act 1989 (regulation of foster placements made by local authorities or independent fostering agencies) whose functions include making recommendations as to whether a person is suitable to foster a child.

(6B) For the purposes of sub-paragraph (1)(t), an adoption panel is a panel established in accordance with regulations made under section 9 of the Adoption and Children Act 2002(35) (power to regulate adoption etc agencies).”

(5) At the appropriate place in sub-paragraph (7) insert the following—

““independent school” has the same meaning as in section 463 of the Education Act 1996(36);”

““proprietor” has the same meaning as in section 579(1) of the Education Act 1996(37);”.

(27) 1996 c. 56; section 19(2B) was inserted by S.I. 2007/1507. Further amendments were made to section 19 of the Act by the Education and Inspections Act 2006 (c. 40), sections 101(1) to (3) and by the Education Act 1997 (c. 44), sections 47(3) and (4), 57(4) and Schedule 8.

(28) Paragraph 4 was amended by S.I. 2009/2610.

(29) Paragraph (aa) was inserted by S.I. 2009/2610.

(30) Paragraph 15 was inserted by the Education Act 1997 (c. 44), section 48 and amended by the School Standards and Framework Act 1998 (c. 31), Schedule 30, paragraph 184(c) and Schedule 31. Further amendments were made by S.I. 2001/2237.

(31) Paragraph (p) was inserted by S.I. 2009/2610.

(32) Sub-paragraph (1A) was inserted by S.I. 2009/2610.

(33) Part 3 has been amended by the Children and Young Persons Act 2008 (c. 23), section 8(1) but these amendments are not yet in force.

(34) Section 59 has been amended by the Children and Young Persons 2008 (c. 41), sections 8(2), Schedule 1, paragraph 2(1), (4) to (6) and Schedule 4 but these amendments are not yet in force. Amendments were also made by Schedule 3, paragraphs 1, 23(1), (3) to (5) of that Act.

(35) 2002 c. 38.

(36) Section 463 was substituted by the Education Act 2002, section 172.

(37) Section 579(1) was amended by S.I.s 2003/2045 and 2005/2913.

Regulated activity: vulnerable adults

6. Part 2 of Schedule 4 to the Act (regulated activity relating to vulnerable adults) is amended in accordance with Articles 7 and 8.

7.—(1) Paragraph 7(38) (general) is amended as follows.

(2) For sub-paragraph (6) (inspection functions of the Welsh Ministers) substitute—

“(6) The exercise of an inspection function of the Welsh Ministers so far as the function gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in the exercise of that function, to have contact with vulnerable adults, is a regulated activity relating to vulnerable adults.”

(3) In sub-paragraph (7) for “Inspection functions are functions” substitute “An inspection function is a function”.

(4) In sub-paragraph (8A) (functions of the Care Quality Commission) for “relates” to the end of paragraph (b) substitute—

“(a) relates to the inspection of anything which is listed in section 60(1) of the Health and Social Care Act 2008 and involves the provision of social services, care, treatment or therapy for vulnerable adults, and

(b) gives the person exercising the function the opportunity, in consequence of anything the person is permitted or required to do in the exercise of that function, to have contact with vulnerable adults.”.

8. In paragraph 8(1)(39) (office holders etc), in paragraph (g) omit “wholly or mainly”.

Minor amendment to Part 2 of Schedule 4 to the Act

9. In paragraph 7(7) (meaning of inspection functions), in paragraph (d) for “an order” substitute “regulations”.

Regulated activity: the period condition

10. In Part 3 of Schedule 4 to the Act (the period condition), in paragraph 10(1) for “two” substitute “three”.

Controlled activity

11. In sections 21(3), (4) and (5) and 22(2) of the Act (controlled activity: children and adults), for “two” substitute “three”.

Provision of information by the Independent Safeguarding Authority to the police: devolution alignment

12. After section 50A(2)(40) of the Act (provision of information to the police) insert—

“(3) In subsection (1), “a chief officer of police” includes—

(a) the Chief Constable of the Police Service of Northern Ireland, and

(b) the chief constable of a police force in Scotland.”

(38) Paragraph 7 was amended by the Health and Social Care Act 2008 (c. 14), Schedule 5, Part 3, paragraphs 93(1) to (3) and Schedule 15, Part 1 and by S.I. 2009/2610.

(39) Paragraph 8(1) was amended by S.I. 2009/2610.

(40) Section 50A was inserted by the Policing and Crime Act 2009 (c. 26), section 88.

Date

Name
Parliamentary Under Secretary of State
Department for Children, Schools and Families

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the definition of regulated activity in the Safeguarding Vulnerable Groups Act 2006 (“the Act”). It also makes amendments to the definitions of controlled activity in sections 21 and 22 of the Act and provides for the Independent Safeguarding Authority (“the ISA”) to be able to disclose information to police forces in Scotland and in Northern Ireland.

The ISA is a statutory non-departmental public body established under section 1 of the Act and is under a duty to establish the children’s barred list and the adults’ barred list. The ISA is tasked with making barring decisions relating to people who are unsuitable to work with vulnerable groups.

Articles 2 to 5 amend the definition of regulated activity relating to children in Part 1 of Schedule 4 to the Act (“the Schedule”).

Article 3 amends paragraph 1 of Schedule 4 and brings the exercise (by any person) of the inspection, review and investigation functions specified in Article 3 within the scope of regulated activity relating to children. The exercise of such functions is only a regulated activity if, in exercising the functions, a person has the opportunity to have contact with children. The Order amends Part 1 of the Schedule in other respects to clarify that this proviso applies also to the existing inspection-related functions in that Part of the Schedule.

Similar amendments are made by Articles 6 and 7 of the Order to the definition of regulated activity relating to vulnerable adults in Part 2 of the Schedule. Article 7(2) amends paragraph 7(6) of the Schedule and makes changes to that paragraph in order to make it consistent with the language of other inspection-related provisions in both Parts 1 and 2 of the Schedule.

Article 4 includes pupil referral units within the list of establishments in paragraph 3(1) of the Schedule where such units do not fall within paragraph 3(1)(a) because they do not provide full-time education to children.

Article 5 amends the list of ‘office-holders’ in paragraph 4(1) of the Schedule by adding positions relating to the management of pupil referral units, individuals who are proprietors, or who take part in the management, of an independent school and members of adoption or fostering panels within the definition of regulated activity relating to children.

Article 10 amends the definition of “period condition” which is set out in Part 3 of the Schedule by replacing the reference to a period of two days with three days. The period condition is relevant to whether or not an activity is a regulated activity. Article 11 makes similar amendments to the definition of controlled activity in sections 21 and 22 of the Act.

Article 12 amends section 50A of the Act. Section 50A was inserted by section 88 of the Policing and Crime Act 2009 (c. 26) and enables the ISA to disclose any information it has to the police in England or in Wales for the purposes of crime prevention, detection, etc. The amendment in Article 12 extends the power under section 50A in order that the ISA is, for the same purposes, able to provide information to the police in Scotland and in Northern Ireland.