

Status: This version of this provision is prospective.

Changes to legislation: Protection of Freedoms Act 2012, Section 73 is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes



Protection of Freedoms Act 2012

2012 CHAPTER 9

PART 5

SAFEGUARDING VULNERABLE GROUPS, CRIMINAL RECORDS ETC.

CHAPTER 1

SAFEGUARDING OF VULNERABLE GROUPS

Main amendments relating to new arrangements: England and Wales

PROSPECTIVE

73 Duty to check whether person barred

After section 34 of the Safeguarding Vulnerable Groups Act 2006 (declarations relating to the provision of barring information) insert—

“34ZA Duty to check whether person barred

- (1) A regulated activity provider who is considering whether to permit an individual (B) to engage in regulated activity relating to children or vulnerable adults must ascertain that B is not barred from the activity concerned before permitting B to engage in it.
- (2) A personnel supplier who—
 - (a) is considering whether to supply an individual (B) to another (P), and
 - (b) knows, or has reason to believe, that P will make arrangements for B (if supplied) to engage in regulated activity relating to children or vulnerable adults,

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must ascertain that B is not barred from the activity concerned before supplying B to P.

- (3) A person is, in particular, to be treated as having met the duty in subsection (1) or (2) if condition 1, 2 or 3 is met.
- (4) Condition 1 is that the person has, within the prescribed period, been informed under section 30A that B is not barred from the activity concerned.
- (5) Condition 2 is that—
 - (a) the person has, within the prescribed period, checked a relevant enhanced criminal record certificate of B which has been obtained within that period, and
 - (b) the certificate does not show that B is barred from the activity concerned.
- (6) Condition 3 is that—
 - (a) the person has, within the prescribed period, checked—
 - (i) a relevant enhanced criminal record certificate of B, and
 - (ii) up-date information given, within that period, under section 116A of the Police Act 1997 in relation to the certificate,
 - (b) the certificate does not show that B is barred from the activity concerned, and
 - (c) the up-date information is not advice to request B to apply for a new enhanced criminal record certificate.
- (7) The Secretary of State may by regulations provide for—
 - (a) the duty under subsection (1) not to apply in relation to persons of a prescribed description,
 - (b) the duty under subsection (2) not to apply in relation to persons of a prescribed description.
- (8) In this section—

“enhanced criminal record certificate” means an enhanced criminal record certificate issued under section 113B of the Police Act 1997,

“relevant enhanced criminal record certificate” means—

 - (a) in the case of regulated activity relating to children, an enhanced criminal record certificate which includes, by virtue of section 113BA of the Police Act 1997, suitability information relating to children, and
 - (b) in the case of regulated activity relating to vulnerable adults, an enhanced criminal record certificate which includes, by virtue of section 113BB of that Act, suitability information relating to vulnerable adults.”

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Changes and effects yet to be applied to :

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

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

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

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