
EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the Order”), amends the definition of regulated activity in Schedule 2 to the Order and the Regulations which prescribe the criteria on the basis of which a person will be included automatically in the barred lists maintained under Article 6 of the Order. It also brings into force amendments to, and the repeal of, provisions in the Police Act 1997 (c. 50) (“the Police Act”) relating to enhanced criminal record certificates and makes transitional provision relating to the issuing of such certificates and to the provision of information by and to the Independent Barring Board (“IBB”) (which is established under section 1 of the Safeguarding Vulnerable Groups Act 2006).

On the coming into operation of this Order, there will be people who are still disqualified from working with children in Northern Ireland by virtue of Article 30 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (“the 2003 Order”) and section 35 of the Criminal Justice and Court Services Act 2000 (c. 43) [which extends to Northern Ireland]. An individual included on the list kept under Article 35 of the 2003 Order will also continue to be prohibited from work in a care position with vulnerable adults. Under Article 32 of the 2003 Order, it is also possible for the Department of Health, Social Services and Public Safety to disqualify from work with children in Northern Ireland an individual who is subject of an equivalent prohibition or disqualification under the law of any other jurisdiction. It is under this provision that individuals included in the list kept under section 1 of the Protection of Children (Scotland) Act 2003 (“the 2003 Act”) would be disqualified from work in Northern Ireland. To retain the existing disqualification regime in Northern Ireland, it is intended to specify the existing 2003 Act list under Article 7 of the Order. It is also intended to specify the list kept under section 89 of the Care Standards Act 2000 (c. 14), which will prohibit individuals included on that list from obtaining work with vulnerable adults in Northern Ireland.

Until such times that existing disqualification or barred lists cease to exist, it will be necessary for these bars to be indicated on enhanced criminal records certificates issued by AccessNI in Northern Ireland. To make this possible, suitability information in relation to children and vulnerable adults as defined in sections 113BA and 113B of the Police Act 1997 must be modified to include references to existing barred lists across the UK, in addition to the barred lists established under the Order. Without modification, enhanced disclosure certificates would only indicate that the applicant was barred from regulated activity).

Article 6 modifies the effect of section 113BA of the Police Act (which will be brought into operation by a separate Commencement Order) so that, during the first transitional period (defined in Article 1), suitability information relating to children includes whether a person is included in any of the existing children’s barred lists across the UK, including provisional inclusion in those lists. These are listed in full in Article 5. Suitability information also includes an indication of whether an individual is barred from regulated activity relating to children under Article 7 of the Order.

Article 7 modifies the effect of section 113BB of the Police Act (which will also be brought into operation by a separate Commencement Order) so that, during the first transitional period (defined in Article 1), suitability information relating to vulnerable adults includes whether a person is included in any of the existing adults’ barred lists across the UK, including provisional inclusion in those lists. These are listed in full in Article 6. Suitability information also includes an indication of whether an individual is barred from regulated activity relating to vulnerable adults under Article 7 of the Order.

Articles 8 and 9 make provision consequential on the repeal of sections 113C and 113D of the Police Act brought into operation by Article 3.

Article 10 modifies the effect of Schedule 1 to the Order so that, during the first transitional period, a person is not to be included automatically in either of the barred lists maintained under Article 7 of the Order unless IBB, rather than the Secretary of State, is satisfied that criteria prescribed for the purposes of paragraph 1, 2, 7 or 8 of Schedule 1 are met. IBB will satisfy itself by accessing information made available to it under Article 18 of this Order and by exercising the powers provided for under paragraph 19(1) of Schedule 1 to the Order.

Article 12 modifies the effect of section 113BA of the Police Act during the second transitional period. During this period a greater range of information will be shown on criminal records certificates, and suitability information relating to children will include whether a person is subject to monitoring and whether IBB is considering whether to include a person in the children's barred list (maintained under Article 7 of the Order).

Article 13 makes equivalent provision in relation to section 113BB of the Police Act.

Article 15 makes consequential modifications to section 116 of the Police Act.

Article 16 modifies the effect of the Teachers' Superannuation Regulations (Northern Ireland) 1998 (S.R. 1998 No. 333) in relation to people included, or considered for inclusion, in a barred list who apply for ill-health pensions.

Article 18 makes provision for IBB to provide information to other persons during the first and second transitional periods. This will enable IBB to provide AccessNI and its equivalents in England, Wales and Scotland with information about people who are included in the children's or adults' barred lists or the lists kept under Article 3 or 35 of the 2003 Order or the list kept under regulation 8 of the 2007 Regulations. IBB will be able to provide similar information to the Department of Education, for example, for the purposes of its functions under the Teachers' Superannuation Regulations (Northern Ireland) 1998. It will also be able to confirm to the General Teaching Council for Northern Ireland whether a person is subject to any of the disqualifications set out in paragraph (3).

Articles 20 and 21 similarly make provision for the Department of Health, Social Services and Public Safety and the Department of Education to continue to advise employers or prospective employers whether a person was included in the lists kept under Article 3 or 35 of the 2003 Order or regulation 8 of the 2007 Regulations.

Article 22 modifies the effect of Schedule 1 to the 2007 Order in relation to any conduct occurring between the coming into operation of this Order and the repeal of the provisions of the 2003 Order which provide for the making of disqualification orders (Articles 23 and 24). The effect of this is that IBB is not to include a person in the children's barred list under paragraph 3 of Schedule 1 if the only conduct it has to consider is conduct which has occurred during that period, the conduct has already been considered by a court, and the court has decided not to impose a disqualification order on the person in question.

Parts 6 and 7 of the Order amend the definition of regulated activity in Schedule 2 to the 2007 Order.

Article 23 provides an exception to the definition of relevant childcare premises. Where a person provides care for a child on premises that are the home of the parent of the child (or the home of one of the children being cared for), such premises are excluded from the definition of relevant childcare premises. This would, for example, apply where a nanny takes care of children in the home of the parents of the children. The intention is to ensure that activities or workers (such as cleaners who are not involved in caring for the children) on premises which are the home of the parents are not caught within the definition of regulated activity.

Articles 24 and 25 bring within the definition of regulated activity, persons who occupy certain positions where, although they may not always work with or have contact with vulnerable groups, they exercise some degree of control or participate in making decisions relating to vulnerable groups.

These persons are referred to as “office-holders”. For example, the chief executive officer of a HSC body is added to the list of office-holders and, as a consequence, will be engaging in regulated activity relating to children and regulated activity relating to vulnerable adults. Other office-holders added to the list of office-holders engaging in regulated activity relating to children are secretaries to governing bodies and individuals (known as “co-opted members”) appointed by the governing body of a grant-aided school.

A further category of office-holder that is added to the definition of regulated activity (relating to children and to vulnerable adults) is an individual who carries on or manages an establishment or agency in respect to which that individual is required to be registered under Article 12 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.