



# 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*

#### **70 Information for purposes of making barring decisions**

- (1) In paragraph 19 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (information required by ISA about persons to whom grounds for barring apply)—
  - (a) in sub-paragraph (1)—
    - (i) in paragraph (a) after “applies” insert “or appears to apply”,
    - (ii) in paragraph (b) for “apply” substitute “applies or appears to apply”, and
    - (iii) omit paragraph (d),
  - (b) in sub-paragraphs (2) and (3) for “thinks might” substitute “reasonably believes to”, and
  - (c) in sub-paragraph (6)—
    - (i) omit the words from “which” to “it is”, and
    - (ii) omit “or paragraph 20(2)”.
- (2) In paragraph 20 of that Schedule to that Act (provision of information by Secretary of State to ISA) for sub-paragraph (2) substitute—
  - “(2) Where the Secretary of State is under a duty under paragraph 1, 2, 7 or 8 to refer a matter to ISA, the Secretary of State must provide to ISA any prescribed details of relevant matter (within the meaning of section 113A

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of the Police Act 1997) of a prescribed description which has been made available to the Secretary of State for the purposes of Part 5 of that Act.”

## 71 Review of barring decisions

After paragraph 18 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (power to apply for review of a person’s inclusion in a barred list) insert—

“18A (1) Sub-paragraph (2) applies if a person’s inclusion in a barred list is not subject to—

- (a) a review under paragraph 18, or
- (b) an application under that paragraph,

which has not yet been determined.

(2) ISA may, at any time, review the person’s inclusion in the list.

(3) On any such review, ISA may remove the person from the list if, and only if, it is satisfied that, in the light of—

- (a) information which it did not have at the time of the person’s inclusion in the list,
- (b) any change of circumstances relating to the person concerned, or
- (c) any error by ISA,

it is not appropriate for the person to be included in the list.”

## 72 Information about barring decisions

(1) For sections 30 to 32 of the Safeguarding Vulnerable Groups Act 2006 (provision of vetting information and information about cessation of monitoring) substitute—

### “30A Provision of barring information on request

(1) The Secretary of State must provide a person (A) with the information mentioned in subsection (3) in relation to another (B) if—

- (a) A makes an application for the information and pays any fee payable in respect of the application,
- (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 A falls within column 1 of the table in Schedule 7 in relation to B,
- (b) that column 2 of the entry by virtue of which A falls within column 1 refers to children or (as the case may be) vulnerable adults, and
- (c) that B has consented to the provision of the information to A.

(3) The information is—

- (a) if A’s declaration states that column 2 of the relevant entry refers to children, whether B is barred from regulated activity relating to children, and

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- (b) if A's declaration states that column 2 of the relevant entry refers to vulnerable adults, whether B is barred from regulated activity relating to vulnerable adults.
- (4) If B consents to the provision of information to A in relation to an application under this section, the consent also has effect in relation to any subsequent such application by A.
- (5) The Secretary of State may prescribe any fee payable in respect of an application under this section.
- (6) Fees received by the Secretary of State by virtue of this section must be paid into the Consolidated Fund.
- (7) The Secretary of State may determine the form, manner and contents of an application for the purposes of this section (including the form and manner of a declaration contained in such an application).

### **30B Provision of barring information on registration**

- (1) The Secretary of State must establish and maintain a register for the purposes of this section.
- (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 and pays any fee payable in respect of the application,
  - (b) the application contains the appropriate declaration, and
  - (c) the Secretary of State has no reason to believe that the declaration is false.
- (3) The appropriate declaration is a declaration by A—
  - (a) that A falls within column 1 of the table in Schedule 7 in relation to B,
  - (b) that column 2 of the entry by virtue of which A falls within column 1 refers to children or (as the case may be) vulnerable adults, and
  - (c) that B has consented to the application.
- (4) A's application and registration relate—
  - (a) if A's declaration states that column 2 of the relevant entry refers to children, to regulated activity relating to children;
  - (b) if A's declaration states that column 2 of the relevant entry refers to vulnerable adults, to regulated activity relating to vulnerable adults.
- (5) The Secretary of State must notify A if B is barred from regulated activity to which A's registration relates.
- (6) The requirement under subsection (5) is satisfied if notification is sent to any address recorded against A's name in the register.
- (7) If B consents to the provision of information to A under section 30A, the consent also has effect as consent to any application by A to be registered in relation to B under this section.
- (8) The Secretary of State may prescribe any fee payable in respect of an application under this section.

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- (9) Fees received by the Secretary of State by virtue of this section must be paid into the Consolidated Fund.
- (10) The Secretary of State may determine the form, manner and contents of an application for the purposes of this section (including the form and manner of a declaration contained in such an application).”
- (2) In section 33 of that Act (cessation of registration)—
- (a) in subsection (1) for “32” substitute “30B”,
  - (b) in subsection (2) for “(6)” substitute “(5)”, and
  - (c) after subsection (3) insert—
    - “(3A) Circumstances prescribed by virtue of subsection (3) may, in particular, include that—
      - (a) the Secretary of State has asked the registered person (A) to make a renewed declaration within the prescribed period in relation to the person (B) in relation to whom A is registered, and
      - (b) either—
        - (i) A has failed to make the declaration within that period, or
        - (ii) A has made the declaration within that period but the Secretary of State has reason to believe that it is false.
    - (3B) A renewed declaration is a declaration by A—
      - (a) that A falls within column 1 of the table in Schedule 7 in relation to B,
      - (b) that column 2 of the entry by virtue of which A falls within column 1 refers to children or (as the case may be) vulnerable adults, and
      - (c) that B consents to the registration of A in relation to B.
    - (3C) If B consents to the provision of information to A under section 30A, the consent also has effect as consent to the registration of A in relation to B.
    - (3D) Section 34 applies in relation to the making of a declaration in response to a request from the Secretary of State of the kind mentioned in subsection (3A)(a) as it applies in relation to the making of a declaration in an application made for the purposes of section 30B.”
- (3) In section 34 of that Act (declarations under sections 30 and 32)—
- (a) in the heading for “30 and 32” substitute “30A and 30B”, and
  - (b) in subsection (1) for “30 or 32” substitute “30A or 30B”.
- (4) Omit entry 19 in the table in paragraph 1 of Schedule 7 to that Act (power to add entries to the table).
- (5) In paragraph 2 of Schedule 7 to that Act (power to amend entries in the table) for the words from “any” to the end substitute “this Schedule”.

- (6) Omit paragraph 3(1)(b) of Schedule 7 to that Act (barring information where certain activities carried on for the purposes of the armed forces of the Crown) and the word “or” before it.

### **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,
- 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,

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- (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.”

#### **74 Restrictions on duplication with Scottish and Northern Ireland barred lists**

(1) Before paragraph 6 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 (restriction on inclusion in children’s barred list for Scottish cases), and after the italic cross-heading before that paragraph, insert—

- “5A (1) ISA must not include a person in the children’s barred list if ISA knows that the person is included in a corresponding list.
- (2) ISA must remove a person from the children’s barred list if ISA knows that the person is included in a corresponding list.
- (3) A corresponding list is a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the children’s barred list.”

(2) In paragraph 6(1)(a) of that Schedule to that Act—

- (a) after “if” insert “ISA knows that”,
- (b) after “authority” insert “—  
(i)”,  
and
- (c) for the words from “(whether” to “list)” substitute “, and  
(ii) has decided not to include the person in the list”.

(3) Before paragraph 12 of that Schedule to that Act (restriction on inclusion in adults’ barred list for Scottish cases), and after the italic cross-heading before that paragraph, insert—

- “11A (1) ISA must not include a person in the adults’ barred list if ISA knows that the person is included in a corresponding list.
- (2) ISA must remove a person from the adults’ barred list if ISA knows that the person is included in a corresponding list.
- (3) A corresponding list is a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the adults’ barred list.”

(4) In paragraph 12(1)(a) of that Schedule to that Act—

- (a) after “if” insert “ISA knows that”,
- (b) after “authority” insert “—  
(i);  
and
- (c) for the words from “(whether” to “list)” substitute “, and  
(ii) has decided not to include the person in the list”.