
EXPLANATORY NOTE

(This note is not part of the Order)

This Order, commences further provisions of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the Order”), and makes amendments to transitional and savings in the Safeguarding Vulnerable Groups (2007 Order) (Commencement No.5, Transitional Provisions and Savings) Order 2009 (“the 2009 Order”).

Article 2 commences articles 25 and 26 of the Order (definitions of controlled activity). These provisions have been partially commenced in earlier commencement orders under the Order but are now commenced in full. “Controlled activity” is defined in Articles 25 and 26 of the Order and covers ancillary support work with children or vulnerable adults in further education, health settings and adult social care. It also extends to work which provides access to educational, health and personal social services records. In Northern Ireland, Enhanced Disclosure Certificates are being obtained on individuals working in controlled activity in advance of the Vetting and Barring Scheme going live in full for the purpose of strengthening safeguards for children and vulnerable adults.

Article 3 supplements the 2009 Order which repeals Article 30 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (POCVA) in specified circumstances. The offence in article 30 of POCVA consists of a person disqualified under that Order (“persons disqualified from working with children”) knowingly applying for, offering to work in or accepting or working in a regulated position. In the same set of circumstances, Article 3 of this Order repeals the offence in Article 30(2) of POCVA. The offence in Article 30(2) of POCVA arises where a person knowingly offers work to or employs a disqualified person, etc. in a regulated position. A regulated position is one that falls within Article 31 of POCVA and consists mainly of specified types of work with or in relation to children. In very general terms, the Article 30(2) offence falls away if a disqualified person is or has ever been barred from regulated activity relating to children but only if the bar took into account the fact that the person was subject to the disqualification order.

Articles 4 to 8 of the Order make amendments to the 2009 Order to remedy some potential unintended consequences of that Order in relation to people who are in the process of being transferred (under the Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008 from the old barring regimes to the barred lists under the Order. The purpose of the amendments is to ensure that where any outstanding review (by the Department of Health, Social Services and Public Safety, the Department of Education or the Care Tribunal) under the old barring legislation or any appeal under that legislation is outstanding, Article 7 of the Order (bar from engaging in regulated activity) does not commence in relation to that person until the relevant review or appeal is finally determined and any period in which an appeal may be made has expired.

Article 9 makes minor amendments to the 2009 Order.