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STATUTORY RULES OF NORTHERN IRELAND

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**2010 No. 30**

**Safeguarding Vulnerable Groups (Regulated Activity, Devolution Alignment and Miscellaneous Provisions) Order (Northern Ireland) 2010**

**PART 6**

Miscellaneous amendments to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

13. The 2007 Order is amended in accordance with Articles 14 to 24.

**Definition of institution of further education**

14. In Article 2(2) (Interpretation) for the definition of “institution of further education”, after “(NI 15)” insert “except that it includes a college or institution established under Article 5(1) of the Agriculture Act (Northern Ireland) 1949 (c.2) for the purpose of instructing persons in agriculture and related subjects”.

**Amendments to references to the Regulation and Improvement Authority**

15.—(1) In Article 2(2) (Interpretation) for the definition of “the Regulation and Improvement Authority” substitute—

““RQIA” means the Health and Social Care Regulation and Quality Improvement Authority;”.

(2) In Article 47(7) and paragraph 1(8) of Schedule 2 for “the Regulation and Improvement Authority” substitute “RQIA”.

**Educational establishments: members of governing body subject to monitoring**

16. In Article 12 (Person not to engage in regulated activity unless subject to monitoring) for paragraph (11) substitute—

“(11) A person does not commit an offence under paragraph (3) if, in relation to any continuous period for which the person is a member of the governing body of the establishment—

- (a) the person’s appointment first took effect before the commencement of this Article, and
- (b) it continues to have effect after such commencement.”.

**Educational establishments: check on members of governing body**

17. In Article 17 (Educational establishments: check on members of governing body)—

- (a) after paragraph (1) insert—

- “(1A) B commits an offence if he—
  - (a) acts as a member of the governing body of an educational establishment mentioned in Article 12(5),
  - (b) has not consented to P making a check in accordance with Article 19(2)(a), and
  - (c) has not provided P with any information required to make that check.”;
- (b) in paragraph (2) after “(1)” insert “ or (1A)”;
- (c) after paragraph (3) insert—
  - “(3A) A person does not commit an offence under paragraph (1A) if, in relation to any continuous period for which the person is a member of the governing body of the establishment—
    - (a) the person’s appointment first took effect before the commencement of this Article, and
    - (b) it continues to have effect after such commencement.”;
- (d) in paragraph (4) for “Paragraph (3) does” substitute “Paragraphs (3) and (3A) do”; and
- (e) after paragraph (5) insert—
  - “(6) The period prescribed for purposes of paragraph (1) must not start before B has—
    - (a) consented to P making a check in accordance with Article 19(2)(a), and
    - (b) provided P with any information required to make that check.”.

### **Monitoring application**

- 18.** In Article 28 (Monitoring)—
  - (a) in paragraph (1)(b) for “a monitoring application” substitute “an application to the Secretary of State under this Article (“a monitoring application”)”;
  - (b) in paragraph (8)(a) delete “Article”; and
  - (c) for paragraph (10) substitute—
    - “(10) The Secretary of State may determine the form, manner and contents of a monitoring application.”.

### **Monitoring: additional fees**

- 19.—**(1) After Article 28 (Monitoring) insert—

#### **“Monitoring: power to prescribe additional fees**

**28A.—**(1) An individual subject to monitoring under Article 28 in relation to a regulated activity must pay a prescribed fee if—

- (a) no fee was payable by virtue of Article 28(1)(d) when the individual made a monitoring application (within the meaning of Article 28) in respect of the activity, and
  - (b) there has been a prescribed change of circumstances as a result of which a fee would be payable by virtue of Article 28(1)(d) if a monitoring application were now made in respect of the activity.
- (2) The amount of the fee payable by virtue of paragraph (1) must not exceed the amount of fee which would be payable if a monitoring application were made in respect of the activity as mentioned in paragraph (1)(b).

- (3) An individual does not cease to be subject to monitoring under Article 28 merely because the individual fails to pay a fee required by this Article (but see Article 32(2A)).”
- (2) In Article 29 (Monitoring fees)—
- (a) in paragraph (1) after “28” insert “or in relation to a change of circumstances under Article 28A”;
  - (b) in paragraph (2)—
    - (i) after “made” insert “, or change of circumstances occurring,”; and
    - (ii) for “that Article” substitute “Article 28”;
  - (c) in paragraph (3) after “made” insert “, or change of circumstances occurring”;
  - (d) in paragraph (4) after “28” insert “ or 28A”;
  - (e) in paragraph (5)—
    - (i) for “power” substitute “powers”; and
    - (ii) for “is” substitute “are”; and
  - (f) in paragraph (6) after “28(1)(d)” insert “ or 28A”.

### **Vetting information**

- 20.** In Article 32 (Provision of vetting information)—
- (a) in paragraph (2)(a) for “a specified entry” substitute “the table in Schedule 5”;
  - (b) after that sub-paragraph (but before the following “and”) insert—
    - “(aa) 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,
    - (ab) whether the information is sought by A with a view to permitting or supplying B to carry out paid activity or with a view to making a check in accordance with Article 19(2)(a) in relation to the appointment of B to a position in which B will carry out paid activity,”;
  - (c) after paragraph (2) insert—
    - “(2A) The Secretary of State may refuse to provide A with the information if B has failed to pay a fee required by Article 28A.”;
  - (d) omit paragraph (3);
  - (e) in paragraph (4)(a) and (b) for “column 2 of the specified entry” substitute “A’s declaration states that column 2 of the relevant entry”;
  - (f) omit paragraph (5); and
  - (g) after paragraph (6) insert—
    - “(6A) “Paid activity” means an activity carried out for financial gain.
    - (6B) The Secretary of State may by regulations provide for an activity to be treated as, or not to be treated as, an activity carried out for financial gain.”.

### **Notification of cessation of monitoring**

- 21.** In Article 34 (Notification of cessation of monitoring)—
- (a) in paragraph (3)(a) for “a specified entry” substitute “the table in Schedule 5”;
  - (b) after that sub-paragraph (but before the following “and”) insert—

- “(aa) 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.”;
- (c) omit paragraph (4);
- (d) in paragraph (5)(a) and (b) for “column 2 of the specified entry” substitute “A’s declaration states that column 2 of the relevant entry”;
- (e) omit paragraph (8).

## Registers

### 22. In Article 43 (Registers: duty to refer)—

- (a) after paragraph (4) insert the following—
  - “(4A) Paragraph (4B) applies where the keeper of a relevant register appearing in any of the entries in column 1 of the table in paragraph (7) thinks that the harm test is satisfied.
  - (4B) Where this paragraph applies, the second condition is to be taken as satisfied if—
    - (a) a relevant registration decision has effect in relation to the person and the reason, or one of the reasons, for the relevant registration decision is also the reason, or one of the reasons, for the keeper thinking the harm test is satisfied,
    - (b) the person is under investigation by the body of which the keeper is the registrar in relation to an offence and matters relevant to that investigation are the reason, or one of the reasons, for the keeper thinking that the harm test is satisfied, or
    - (c) the body of which the keeper is the registrar holds information about the person which the keeper thinks is likely, in due course—
      - (i) to lead to the making of a relevant registration decision for a reason which is the same as the reason, or one of the reasons, for the keeper thinking that the harm test is satisfied, or
      - (ii) to lead to an investigation in relation to an offence in which matters relevant to that investigation are the reason, or one of the reasons, for the keeper thinking that the harm test is satisfied.
  - (4C) For the purposes of paragraph (4B), a relevant registration decision is a decision, however expressed—
    - (a) to refuse to register a person in a relevant register,
    - (b) to remove a person from a relevant register,
    - (c) to suspend a person’s registration in a relevant register (whether for a specified period or pending the outcome of an investigation or the final determination of proceedings),
    - (d) to make a person’s registration in a relevant register conditional on the person’s compliance with specified requirements (whether for a specified period or pending the outcome of an investigation or the final determination of proceedings),
    - (e) to annotate a person’s entry in a relevant register with a record of a formal caution or warning, or
    - (f) to agree with a person’s undertakings in respect of that person’s future conduct, if those undertakings are recorded in the relevant register.”; and
- (b) in the table in paragraph (7) in entry 3, in column 1 (relevant register) for “Either of” substitute “Any of”.

**23.** In Article 45 (Registers: notice of barring and cessation of monitoring), in paragraph (6)(a), omit “of entry 1 or 8”.

**24.** In Article 46 (Registers: power to apply for vetting information), in paragraph (4)(a), omit “of entry 1 or 8”.