

# **SAFEGUARDING VULNERABLE GROUPS ACT 2006**

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## **EXPLANATORY NOTES**

### **RESTRICTIONS ON PARTICIPATING IN REGULATED ACTIVITY**

#### ***Section 7: Barred person not to engage in regulated activity***

53. This section makes it an offence for a barred person to engage in regulated activity, or seek or offer to engage in regulated activity.
54. Subsection (3) provides a defence if the person can prove that he did not know, and could not reasonably be expected to know, that he was barred. A person who, for example, could not be contacted by IBB either when it was considering whether to include him in the list (so as to give him an opportunity to make representations) or when it made known its barring decision might benefit from this defence.
55. Subsection (4) does specify one type of exceptional situation where a person who knows he is barred is able to engage in regulated activity. This is where he reasonably thinks that it is necessary to do so in order to prevent harm coming to a child or vulnerable adult, where he reasonably thinks that there was no-one else around who could engage in the activity for that purpose and he engages in the activity for the shortest amount of time necessary. This would cover a barred doctor providing first aid to a child who had an accident in the street.
56. Subsection (5) modifies the definition of regulated activity for the purposes of section 7. It disapplies the requirements about frequency and the period condition. This means that for the purposes of this section a relevant activity will be regulated activity even if it is carried out once only. So, for example, a person who is barred from regulated activity relating to children will commit an offence if he supervises children on a single occasion.

#### ***Section 8: Person not to engage in regulated activity unless subject to monitoring***

57. Subsection (1) makes it an offence for a person to engage in regulated activity with the permission of a regulated activity provider unless he is subject to monitoring. (A person may apply to become subject to monitoring under section 24.)
58. Subsection (2) ensures that childminders who are required to be registered under the provisions of the Childcare Act 2006 or who would be required to be registered but for the fact that they do not provide childcare for a child below the age of eight will be required to be subject to monitoring. This applies even where the childminder is engaged in providing services to a person who is not a regulated activity provider (see note on section 6 for definition of regulated activity provider). This requirement also applies to childminders in Wales in similar circumstances.
59. Subsection (3) makes it an offence for a person to act as a member of a governing body of an educational establishment whilst not subject to monitoring. A “member of a governing body” can include not only a person traditionally described as a “governor”

but also one who is a member of a body which “governs” an educational establishment, for example, a director or trustee if the board of directors or trustees is the “governing body” of the relevant educational institution.

60. Subsection (6) ensures that this offence does not apply if the individual who engages in the activity is under 16 years old. This will ensure that young people can, for example, undertake work experience in a nursery without being subject to monitoring.
61. Subsections (7) and (11) ensure that those already in post before it becomes an offence for an individual not to be subject to monitoring will not initially be criminalised if they are not subject to monitoring. The implementation of the scheme will be phased and the intention is that, to start with, only new appointments will be subject to its requirements. After a prescribed date however (subsections (9) and (12)) those already in post at the commencement of section 8 will need also to be subject to monitoring.
62. Subsection (8) extends the scope of subsection (7) in certain cases involving NHS employment. It deals with the situation where a person is engaged in relevant NHS employment when the section comes into force and he then engages in another form of relevant NHS employment. In this case, the first NHS employment is caught by subsection (7). The second NHS employment is not caught by subsection (7) as the permission to engage in that activity does not pre-date commencement of the section. Subsection (8) ensures that in this situation the person does not need to apply to be subject to monitoring in respect of the second NHS employment until he needs to apply to be subject to monitoring in respect of the first NHS employment.
63. Subsection (10) ensures that a person does not commit an offence if he engages in regulated activity mentioned in section 16 and that activity is regulated activity relating to vulnerable adults. Section 16 contains miscellaneous exceptions for persons such as prison officers.
64. Subsection (14) will require courts to consider the extent to which guidance issued by the Secretary of State on the definition of “frequently” has been followed when setting the penalty for the commission of the offence in the section. This is intended to protect those individuals who have followed the Secretary of State’s guidance in the event that a court takes a different view to the Secretary of State on the interpretation of frequently.

### ***Section 9: Use of barred person for regulated activity***

65. This section makes it an offence for any person to permit an individual to engage in regulated activity if he knows or has reason to believe that the individual is barred from that activity and the person engages in the activity. Subsection (5) makes similar modifications to the definition of regulated activity as are made by section 7(5). So even where the regulated activity is taking place occasionally or for a short period of time, the person giving permission would commit an offence. There is a similar offence in respect of a personnel supplier (defined in section 60) who supplies an individual for regulated activity.
66. Subsection (4) provides a defence where it is necessary for an employer to permit a barred individual to engage in regulated activity to prevent harm. This will only be in rare circumstances where there was no-one else who could engage in the specific activity e.g. a school giving a barred parent who had come to pick up their child consent by phone to look after a stricken child at the school campsite where the sole teacher in charge had been taken ill.

### ***Section 10: Use of person not subject to monitoring for regulated activity***

67. This section makes it an offence for a regulated activity provider to permit an individual whom he knows or has reason to believe is not subject to monitoring in relation to regulated activity to engage in that activity. A similar offence is created in relation to a personnel supplier who supplies an individual in these circumstances, though

the regulated activity provider will commit the offence only if the individual actually engages in the activity.

68. Subsection (3) redefines regulated activity, for the purposes of subsection (2), so that it is an offence for a personnel supplier to supply an individual to engage in regulated activity without them being subject to monitoring, even where this activity takes place only briefly or for a short period of time. Again the modifications mirror those made by section 7(5), which are explained more extensively above.
69. Subsection (5) ensures that this offence does not apply if the individual who engages in the activity is under 16 years old. This will ensure that a person will be able to use, for example, young people who are not subject to monitoring for work experience in a nursery.
70. Subsections (6), (8), (11) and (12) have a similar purpose to section 8(7), (9), (11) and (12) (see above).
71. Again, similarly to section 8 for employees and volunteers, subsections (7) and (9) exempt certain providers of regulated activity mentioned in sections 16 and 17 (where certain conditions are met), from the offence of employing someone whom he knows or has reason to believe is not subject to monitoring.
72. Subsection (10) will require courts to consider the extent to which guidance issued by the Secretary of State on the definition of “frequently” has been followed when setting the penalty for the commission of the offence in the section. This is intended to protect employers who have followed the Secretary of State’s guidance in the event that a court takes a different view to the Secretary of State on the interpretation of “frequently”.

### ***Section 11: Regulated activity provider: failure to check***

73. This section makes it an offence for a regulated activity provider to permit an individual to engage in regulated activity without first ascertaining that they are subject to monitoring in relation to the activity (the offence only applies if the individual actually engages in the activity). The regulated activity provider must ascertain whether the individual is subject to monitoring in accordance with the relevant Part of Schedule 5 (see below). It is also an offence to knowingly or recklessly provide false written confirmation that is required by Schedule 5 (subsection (8)).
74. Subsection (2) defines what it means to check whether a person is subject to monitoring. The various methods of checking whether a person is subject to monitoring are set out in Schedule 5.
75. This section lists defences which apply in specific circumstances. Subsections (3) and (4) exempt certain providers of regulated activity mentioned in sections 16 and 17 (where certain conditions are met), from the requirement to check that an individual is subject to monitoring.
76. Subsection (5) ensures that this offence does not apply if the individual is under 16 years old. This will ensure that, for example, a care home could give work experience to young people without having to check that they are subject to monitoring.
77. Provision equivalent to that in section 8(7) (see above) is made in subsection (6) for regulated activity providers and covers permission to carry out an activity that was given before commencement of section 11.
78. Subsection (10) will require courts to consider the extent to which guidance issued by the Secretary of State on the definition of “frequently” has been followed when setting the penalty for the commission of the offence in the section. This is intended to protect employers who have followed the Secretary of State’s guidance in the event that a court takes a different view to the Secretary of State on the interpretation of “frequently”.

**Schedule 5 – Appropriate verification**

79. **Schedule 5** sets out how a regulated activity provider fulfils the duty to check that a person is subject to monitoring.
80. The default position is that a regulated activity provider must obtain an appropriate verification in accordance with one of the methods set out in Part 1 of the Schedule. In summary the methods are:
- a. making a check through an application under section 30 (see paragraph 1(1)(a)) that the person is subject to monitoring, and whether he is undergoing assessment (as defined in section 31(4));
  - b. obtaining an enhanced criminal record certificate under the Police Act 1997 in relation to the person (see paragraph 1(1)(b)) containing “suitability information” including whether the person is subject to monitoring, and whether he is being considered for barring (other than automatic barring) (see paragraph 11 of Schedule 5 and paragraph 14 of Schedule 9), or obtaining information derived from such a certificate (see paragraph 2);
  - c. obtaining written confirmation from another regulated activity provider who is also permitting the person to engage in the activity concerned that the other regulated activity provider:
    - i. has no reason to believe that the person is barred or not subject to monitoring in relation to the activity; and
    - ii. is registered to be notified by the Secretary of State if the person ceases to be subject to monitoring in relation to the activity.
  - d. obtaining written confirmation from a personnel supplier who is supplying the person to engage in the activity concerned that the personnel supplier:
    - i. has no reason to believe that the person is barred or not subject to monitoring in relation to the activity; and
    - ii. is registered to be notified by the Secretary of State if the person ceases to be subject to monitoring in relation to the activity.
81. For example where a school hires a building contractor to carry out maintenance work on the school, the school may rely on written confirmation from the contractor. And where an employment agency supplies carers for a care home, the care home may rely on written confirmation from the employment agency.
82. **Section 11(8)** makes it an offence to provide written confirmation that is false.
83. **Part 2** of the Schedule applies only in prescribed cases (see section 11(2)). To make a check under part 2 a regulated activity provider must both check a person is subject to monitoring and have taken prescribed steps to obtain an enhanced criminal record certificate. A regulated activity provider may rely on a check carried out by another regulated activity provider or by a personnel supplier in the same circumstances set out for part 1. But under part 2 the regulated activity provider must obtain from the other regulated activity provider or personnel supplier a copy of an enhanced criminal record certificate in addition to written confirmation. The written confirmation must include that the regulated activity provider or personnel supplier:
- a. has no reason to believe that the person is barred or not subject to monitoring in relation to the activity;
  - b. is registered to be notified by the Secretary of State if the person ceases to be subject to monitoring in relation to the activity; and

- c. has not had disclosed to him, in connection with the criminal record certificate, information from the Secretary of State in pursuance of section 113B(6)(b) of the Police Act 1997. This is information which, in the interests of the prevention or detection of crime, the chief officer of a relevant police force did not consider could be included on the criminal record certificate, but could nonetheless be provided to the registered person who countersigned the application for the criminal record certificate.
84. **Part 3** of the Schedule also applies only in prescribed cases (see section 11(2)). To make a check under part 3 a regulated activity provider must obtain a copy of an enhanced criminal record certificate. As throughout Schedule 5, the certificate must provide the suitability information referred to in paragraph 11 including, amongst other things, information as to whether the person is barred, being considered for barring (other than automatic barring) and/or is subject to monitoring in relation to the activity. The regulated activity provider may also rely on written confirmation and an enhanced criminal record certificate from another regulated activity provider or a personnel supplier as set out, above, for part 2.

### ***Section 12: Personnel suppliers: failure to check***

85. This section refers to Schedule 6 – see below.
86. Subsection (2) enables the Secretary of State to extend the requirement on employment businesses to check an individual’s status to other types of personnel supplier (as defined in the Act) by order (subject to the negative resolution procedure).

### ***Schedule 6 – Employment businesses: failure to check***

87. This Schedule provides that an employment business will commit an offence if they fail to register an interest in an individual (see section 32) prior to supplying the individual to engage in regulated activity. Registering an interest will ensure that the employment business is informed if the individual ceases to be subject to monitoring. The Schedule also allows the Secretary of State to prescribe circumstances in which it will be an offence for such a business to supply an individual without having obtained an enhanced criminal record certificate in relation to that individual. Moreover, Paragraph 4 has the effect that employment businesses are placed under the requirements of this Schedule even if an individual will only be engaged in regulated activity infrequently, or on fewer than three days in a 30 day period.

### ***Section 13: Educational establishments: checks on members of governing body***

88. This section provides that an appropriate officer commits an offence if he fails within a prescribed period to make a check in accordance with section 15 in relation to a person who is appointed to the governing body of an educational establishment mentioned in section 8(5). The “appropriate officer” for each type of educational establishment, e.g. maintained schools, academies, etc. will be prescribed in regulations.
89. Provision is made in subsection (3) not to apply the requirements to appointments made before commencement of section 13. Subsection (4) enables this exemption to be switched off.

### ***Section 14 Office holders: offences***

90. Subsection (1) enables the Secretary of State by regulations to provide that a person commits an offence if he engages in regulated activity by holding a specified office and he is not subject to monitoring.
91. Subsection (2) enables the Secretary of State by regulations to provide that a specified person commits an offence if he fails to carry out a check under section 15 in relation to a person appointed to such an office.

*These notes refer to the Safeguarding Vulnerable Groups Act  
2006 (c.47) which received Royal Assent on 8 November 2006*

***Section 15 – sections 13 and 14: checks***

92. This section sets out how checks of governors of educational institutions and other officers prescribed by section 14 are to be made. Any of the methods mentioned in subsections (2) and (3) may be used.