Draft Regulations laid before Parliament under section 61(3) of the Safeguarding Vulnerable Groups Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. 0000

CHILDREN AND YOUNG PERSONS, ENGLAND AND WALES

PROTECTION OF VULNERABLE ADULTS, ENGLAND AND WALES

The Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Miscellaneous Provisions) Regulations 2010

Made - - - - 2010

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 23(1), 61(5) and 64(1)(a) and (3) of, and paragraphs 1(1), 2(1), 7(1), 8(1) and 24(1) and (2) of Schedule 3 to, the Safeguarding Vulnerable Groups Act 2006(**a**):

In accordance with section 56(3)(q) of that Act, the Secretary of State has consulted the Welsh Ministers:

A draft of these Regulations was laid before Parliament in accordance with section 61(3) of that Act and approved by resolution of each House of Parliament:

Citation and commencement

1. These Regulations may be cited as the Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Miscellaneous Provisions) Regulations 2010 and come into force on the day after the day on which they are made.

Circumstances in which a responsible person must not permit another to engage in a controlled activity in England relating to children

2.—(1) This regulation applies only in relation to controlled activity in England.

(**a**) 2006 c. 47. Each of paragraphs 1(1), 2(1), 7(1) and 8(1) of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006 ("the Act") refers to criteria prescribed for the purposes of the relevant paragraph. Paragraph 24 of Schedule 3 to the Act makes provision as to the criteria that may be prescribed for the purposes of paragraphs 1(1), 2(1), 7(1) and 8(1) of that Schedule. Paragraph 24(2) was amended by S.I. 2008/3050. Section 60(1) of the Act defines "prescribed" as meaning prescribed by regulations made by the Secretary of State.

(2) A responsible person(**a**) ("RP") may only permit another ("A") to engage in a controlled activity relating to children(**b**) in the circumstances specified in paragraph (3) or the circumstances specified in paragraph (4).

(3) The circumstances in this paragraph are that—

(a) the Secretary of State has issued to A under section 113B of the Police Act 1997(**c**) either—

(i) an enhanced criminal record certificate which includes suitability information relating to children (within the meaning of section 113BA of that Act(**d**)), or

(ii) a notification that A is—

(aa) not barred from regulated activity relating to children(**e**),

(bb) not included in the list kept under section 1 of the Protection of Children Act 1999(**f**), and

(cc) not subject to a direction made under section 142 of the Education Act 2002(**g**);

(b) the certificate or notification was issued within the period of 90 days ending on the date on which RP permits A to engage in a controlled activity relating to children; and

(c) RP received a copy of that certificate or notification before permitting A to engage in a controlled activity relating to children.

(4) The circumstances in this paragraph are that RP is satisfied, before permitting A to engage in controlled activity relating to children, that A is—

(a) not barred from regulated activity relating to children,

(b) not included in the list kept under section 1 of the Protection of Children Act 1999, and

(c) not subject to a direction made under section 142 of the Education Act 2002.

(5) Paragraph (2) does not apply in relation to any continuous period in which A is permitted by RP to engage in a controlled activity relating to children if—

(a) the permission was given before these Regulations came into force, and

(b) the permission continues to have effect after these Regulations came into force.

Circumstances in which a responsible person must not permit another to engage in controlled activity in England relating to vulnerable adults

3.—(1) This regulation applies only in relation to controlled activity in England.

(2) A responsible person ("RP") may only permit another ("A") to engage in a controlled activity relating to vulnerable adults in the circumstances specified in paragraph (3) or the circumstances specified in paragraph (4).

(**a**) Section 23(3) of the Act provides the meaning of a responsible person.

(**b**) Section 21 of the Act provides the meaning of a controlled activity relating to children.

(**c**) 1997 c. 50. Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15) and amended by section 63(1) of, and paragraph 14(1) and (3) of Part 2 of Schedule 9 to, the Act, section 378(1) of, and paragraph 149 of Schedule 16 to, the Armed Forces Act 2006 (c. 52), and articles 2 and 4 of the Police Act 1997 (Criminal Records) (Electronic Communications) Order 2009, S.I. 2009/203.

(**d**) Section 113BA was inserted by section 63(1) of, and paragraph 14(1) and (4) of Part 2 of Schedule 9 to, the Act, and was amended by section 170(2) of the Education and Inspections Act 2006 (c. 40) (in relation to Wales; the amendment was not in force in relation to England on the making of these Regulations). Section 169 of, and paragraph 12 of Part 1 of Schedule 1 to, the Education and Skills Act 2008 (c. 25) also amend section 113BA, but were not in force on the making of these Regulations.

(**e**) Section 3(2) of the Act specifies when a person is barred from regulated activity relating to children.

(**f**) 1999 c. 14. Section 1 was amended by sections 95 to 98 of the Care Standards Act 2000 (c. 14) and repealed by section 63 of, paragraph 8(1) and (2) in Part 1 of Schedule 9 to, and Schedule 10 to the Act, subject to the transitional and saving provisions in article 5 of the Safeguarding Vulnerable Groups Act 2006 (Commencement No. 6, Transitional Provisions and Savings) Order 2009, S.I. 2009/2611 ("the CN6TPSO").

(**g**) 2002 c. 32. Section 142 was repealed by section 63 of, and Schedule 10 to, the Act, subject to the transitional and saving provisions in article 7 of the CN6TPSO.

(3) The circumstances in this paragraph are that—

(a) the Secretary of State has issued to A under section 113B of the Police Act 1997 either—

(i) an enhanced criminal record certificate which includes suitability information relating to vulnerable adults (within the meaning of section 113BB of that Act(**a**)), or

(ii) a notification that A is—

(aa) not barred from regulated activity relating to vulnerable adults(**b**), and

(bb) not included in the list kept under section 81 of the Care Standards Act 2000(**c**);

(b) the certificate or notification was issued within the period of 90 days ending on the date on which RP permits A to engage in a controlled activity relating to vulnerable adults; and

(c) RP received a copy of that certificate or notification before permitting A to engage in a controlled activity relating to vulnerable adults.

(4) The circumstances in this paragraph are that RP is satisfied, before permitting A to engage in controlled activity relating to vulnerable adults, that A is—

(a) not barred from regulated activity relating to vulnerable adults, and

(b) not included in the list kept under section 81 of the Care Standards Act 2000.

(5) Paragraph (2) does not apply in relation to any continuous period in which A is permitted by RP to engage in a controlled activity relating to vulnerable adults if—

(a) the permission was given before these Regulations came into force, and

(b) the permission continues to have effect after these Regulations came into force.

Modification of section 113A of the Police Act 1997

4.—(1) Section 113A(1)(**d**) of the Police Act 1997 does not apply if the exempted question referred to in section 113A(2)(b) relates to the assessment of the suitability of a person for any work which is a controlled activity relating to children or a controlled activity relating to vulnerable adults.

(2) After section 113A(9) of the Police Act 1997, insert—

"(10) This section is subject to regulation 4 of the Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Miscellaneous Provisions) Regulations 2010.".

Modification of section 113B of the Police Act 1997: assessment of suitability for work which is a controlled activity relating to children

5.—(1) If—

(a) the Secretary of State would, apart from this regulation, be required to issue to an individual an enhanced criminal record certificate within the meaning of section 113B(1) of the Police Act 1997, and

(b) paragraph (2) applies,

the Secretary of State must issue to the individual a notification instead of a certificate.

(2) This paragraph applies if—

(**a**) Section 113BB was inserted by section 63(1) of, and paragraph 14(1) and (4) of Part 2 of Schedule 9 to, the Act.

(**b**) Section 3(3) of the Act specifies when a person is barred from regulated activity relating to vulnerable adults.

(**c**) Section 81 was repealed by section 63 of, paragraph 9 in Part 1 of Schedule 9 to, and Schedule 10 to, the Act, subject to the transitional and saving provisions in article 6 of the CN6TPSO.

(**d**) Section 113A was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 and amended by section 63(1) of, and paragraph 14(1) and (2) of Part 2 of Schedule 9 to, the Act, section 50(1) and (3) of the Criminal Justice and Immigration Act 2008 (c. 4) and articles 2 and 3 of the Police Act 1997 (Criminal Records) (Electronic Communications) Order 2009, S.I. 2009/203.

(a) the only prescribed purpose for which the registered person(**a**) states that the certificate is required is the assessment of the suitability of a person for any work which is a controlled activity relating to children; and

(b) the individual is—

(i) not barred from regulated activity relating to children,

(ii) not included in the list kept under section 1 of the Protection of Children Act 1999, and

(iii) not subject to a direction made under section 142 of the Education Act 2002.

(3) But paragraph (2) does not apply if the controlled activity is work in a further education institution within the meaning of section 140(3) of the Education Act 2002 where the normal duties of that work involve regular contact with persons aged under 18.

(4) The notification must state that the individual is—

(a) not barred from regulated activity relating to children,

(b) not included in the list kept under section 1 of the Protection of Children Act 1999, and

(c) not subject to a direction made under section 142 of the Education Act 2002.

(5) The Secretary of State must send a copy of the notification to whoever acted as the registered person(**b**) in relation to the application for the certificate.

Modification of section 113B of the Police Act 1997: assessment of suitability for work which is a controlled activity relating to vulnerable adults

6.—(1) If—

(a) the Secretary of State would, apart from this regulation, be required to issue to an individual an enhanced criminal record certificate within the meaning of section 113B(1) of the Police Act 1997, and

(b) paragraph (2) applies,

the Secretary of State must issue to the individual a notification instead of a certificate.

(2) This paragraph applies if—

(a) the only prescribed purpose for which the registered person states that the certificate is required is the assessment of the suitability of a person for any work which is a controlled activity relating to vulnerable adults; and

(b) the individual is—

(i) not barred from regulated activity relating to vulnerable adults, and

(ii) not included in the list kept under section 81 of the Care Standards Act 2000.

(3) The notification must state that the individual is—

(a) not barred from regulated activity relating to vulnerable adults, and

(b) not included in the list kept under section 81 of the Care Standards Act 2000.

(4) The Secretary of State must send a copy of the notification to whoever acted as the registered person in relation to the application for the certificate.

(**a**) Section 120 of the Police Act 1997 provides that, for the purposes of Part V of that Act, a registered person is a person who is listed in a register to be maintained by the Secretary of State for the purposes of that Part.

(**b**) Section 113B(12) of the Police Act 1997 provides that, for the purposes of that Act, a person acts as the registered person in relation to an application for an enhanced criminal record certificate if the person countersigns the application or transmits the application to the Secretary of State under subsection (2A).

Modification of section 113B of the Police Act 1997: assessment of suitability for work which is a controlled activity relating to children and for work which is a controlled activity relating to vulnerable adults

7.—(1) If—

(a) the Secretary of State would, apart from this regulation, be required to issue to an individual an enhanced criminal record certificate within the meaning of section 113B(1) of the Police Act 1997, and

(b) paragraphs (2), (4) and (5) apply,

the Secretary of State must issue to the individual a notification instead of a certificate.

(2) This paragraph applies if the prescribed purposes for which the registered person states that the certificate is required are the assessment of the suitability of a person for any work which is a controlled activity relating to children and the assessment of the suitability of a person for any work which is a controlled activity relating to vulnerable adults.

(3) But paragraph (2) does not apply if the controlled activity is work in a further education institution within the meaning of section 140(3) of the Education Act 2002 where the normal duties of that work involve regular contact with persons aged under 18.

(4) This paragraph applies if the individual is—

(a) not barred from regulated activity relating to children,

(b) not included in the list kept under section 1 of the Protection of Children Act 1999, and

(c) not subject to a direction made under section 142 of the Education Act 2002.

(5) This paragraph applies if the individual is—

(a) not barred from regulated activity relating to vulnerable adults, and

(b) not included in the list kept under section 81 of the Care Standards Act 2000.

(6) The notification must state that the individual is—

(a) not barred from regulated activity relating to children,

(b) not included in the list kept under section 1 of the Protection of Children Act 1999,

(c) not subject to a direction made under section 142 of the Education Act 2002,

(d) not barred from regulated activity relating to vulnerable adults, and

(e) not included in the list kept under section 81 of the Care Standards Act 2000.

(7) The Secretary of State must send a copy of the notification to whoever acted as the registered person in relation to the application for the certificate.

(8) If paragraphs (2) and (4) apply but paragraph (5) does not apply, the information referred to in section 113B(4), (5) and (6)(b) must relate only to the assessment of the suitability of the person for any work which is a controlled activity relating to vulnerable adults.

(9) If paragraphs (2) and (5) apply but paragraph (4) does not apply, the information referred to in section 113B(4), (5) and (6)(b) must relate only to the assessment of the suitability of the person for any work which is a controlled activity relating to children.

Further modification of section 113B of the Police Act 1997

8. After section 113B(12) of the Police Act 1997, insert—

"(13) This section is subject to regulations 5, 6 and 7 of the Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Miscellaneous Provisions) Regulations 2010.".

Amendment of the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009

9.—(1) The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009(**a**) are amended as follows.

(2) In regulation 1—

(a) for paragraphs (6) and (7), substitute—

"(6) In regulations 3 to 6—

(a) a reference to an offence, A, specified in the Schedule includes a reference to an offence, B, which in relation to offence A is a connected offence, and

(b) a reference to being convicted of an offence specified in the Schedule includes a reference to being convicted of—

(i) an Islands offence, or

(ii) a relevant foreign offence.

(7) In paragraph (6)(b), an Islands offence is an offence satisfying the criteria in paragraph (7A) and a relevant foreign offence is an offence satisfying the criteria in paragraph (8).

(7A) The criteria are that—

(a) the offence is one under the law in force in the Isle of Man or any of the Channel Islands;

(b) the conduct which constitutes the offence would, if carried out in England and Wales, amount to an equivalent offence which is specified in the Schedule; and

(c) where the equivalent offence is one specified in paragraph 1(a) to (c), (e) or (g)(i), 2(b)(ii) to (v), (c), (d)(ii), (e), (g) or (i)(i) or 4(b)(ii) to (vii), (c), (d)(ii), (e), (g) or (i)(i) of the Schedule, the offence was committed in relevant circumstances relating to the equivalent offence."; and

(b) after paragraph (8), insert—

"(8A) For the purposes of paragraph (7A), an act punishable under the law in force in the Isle of Man or any of the Channel Islands constitutes an offence under that law however it is described in that law.".

(3) In paragraph 2 of the Schedule(**b**), in Part 2 of the table omit—

(a) "Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968, section 9", and

(b) "Sexual Offences (Scotland) Act 1976, section 3".

(4) In paragraph 4 of the Schedule(**c**), in Part 1 of the table—

(a) at the appropriate places in the first column, insert—

(i) "Sexual Offences Act 2003(**d**), section 66",

(ii) "Sexual Offences Act 2003, section 67",

(iii) "Sexual Offences (Northern Ireland) Order 2008(**e**), Article 70", and

(iv) "Sexual Offences (Northern Ireland) Order 2008, Article 71";

(**a**) S.I. 2009/37 as amended by S.I. 2009/2610.

(**b**) The offences specified in paragraph 2 of the Schedule are prescribed by regulation 4(5) of the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 as a criterion for automatic inclusion in the children's barred list with the right to make representations.

(**c**) The offences specified in paragraph 4 of the Schedule are prescribed by regulation 6(b) of the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 as a criterion for automatic inclusion in the adults' barred list with the right to make representations.

(**d**) 2003 c. 42.

(**e**) S.I. 2008/1769 (N.I. 2).

(b) in the second column, at places that correspond with each of the entries mentioned in subparagraph (a), insert "The offence was committed against a child under the age of 16";

(c) in the first column, omit—

(i) "Sexual Offences Act 1956, section 1", and

(ii) "Sexual Offences Act 2003, section 1"; and

(d) in the second column, omit the entries that correspond with the entries mentioned in subparagraph (c).

(5) In paragraph 4 of the Schedule, in Part 2 of the table—

(a) omit—

(i) "Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968, section 9",

(ii) "Sexual Offences Act 2003, section 66",

(iii) "Sexual Offences Act 2003, section 67",

(iv) "Sexual Offences (Northern Ireland) Order 2008, Article 70", and

(v) "Sexual Offences (Northern Ireland) Order 2008, Article 71"; and

(b) at the appropriate places in the first column insert—

(i) "Sexual Offences Act 1956, section 1(**a**)", and

(ii) "Sexual Offences Act 2003, section 1".

(6) Regulation 24(3)(b) of the Safeguarding Vulnerable Groups Act 2006 (Regulated Activity, Miscellaneous Provisions and Commencement No. 5) Order 2009(**b**) is revoked.

Name
Parliamentary Under Secretary of State
Department for Children, Schools and Families

Date

(**a**) 1956 c. 69. Section 1 was substituted by section 142 of the Criminal Justice and Public Order Act 1994 (c.33) and repealed by paragraph 11 of Schedule 6 to the Sexual Offences Act 2003.

(**b**) S.I. 2009/2610.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, made under the Safeguarding Vulnerable Groups Act 2006 ("the Act"), make provision relating to controlled activity and to the criteria prescribed for the purposes of various paragraphs in Schedule 3 (barred lists) to the Act. The Regulations come into force on the day after the day on which they are made.

Regulation 2 provides that a responsible person, as defined in section 23(3) of the Act, may only permit another to engage in controlled activity relating to children, as defined in section 21 of the Act, in the circumstances specified in that regulation; this restriction does not apply if permission was given before the Regulations came into force and remains in place after that date. Regulation 3 makes provision in relation to controlled activity relating to vulnerable adults, as defined in section 22 of the Act, in terms similar to the provision made in regulation 2. Regulations 2 and 3 apply in relation only to controlled activity in England.

Regulation 4 modifies section 113A of the Police Act 1997. The modification provides that the duty of the Secretary of State to issue a criminal record certificate does not apply if the exempted question for which the certificate is required relates to the assessment of the suitability of a person for any work which is a controlled activity relating to children or a controlled activity relating to vulnerable adults.

Regulations 5, 6 and 7 modify section 113B of the Police Act 1997. The modifications provide for the Secretary of State to issue a notification stating that the person is not barred from regulated activity in relation to children and/or vulnerable adults, instead of an enhanced criminal record certificate. The notification is relevant to the circumstances specified in regulations 2 and 3. The modifications do not apply if the controlled activity is work in a further education institution where the normal duties of that work involve regular contact with persons aged under 18. Regulation 8 makes a textual modification of section 113B of the Police Act 1997, referring to regulations 5, 6 and 7.

Regulation 9 amends the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 which prescribe the criteria which determine whether a person should be included automatically in the children's barred list or the adults' barred list maintained under section 2 of the Act.

An assessment of the impact of these Regulations is set out at section 10 of the Explanatory Memorandum which is available alongside these Regulations on the OPSI website.

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