

2012 No. 323

SAFEGUARDING VULNERABLE GROUPS

The Safeguarding Vulnerable Groups (Miscellaneous Provisions) Regulations (Northern Ireland) 2012

Made - - - - *14th August 2012*

Laid before Parliament *17th August 2012*

Coming into operation in accordance with regulation 1(2) and (3)

The Secretary of State makes the following Regulations in exercise of the powers conferred by Articles 6(5), 37(1), 38(1), 39(2), 41(1) and (5), 44(2), 43(1), 47(1) and (5), 48(1) and (2) and 52A(1)(d) of, and paragraph 15 of Schedule 1, and paragraph 7(1)(f) and (g) of Schedule 2 to, the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Safeguarding Vulnerable Groups (Miscellaneous Provisions) Regulations (Northern Ireland) 2012.

(2) Subject to paragraph (3), these Regulations shall come into operation on 10th September 2012.

(3) Regulations 7 to 9 and 23 to 26 shall come into operation on 10th September 2012 immediately after the commencement of paragraph 3 of Schedule 7 to the Protection of Freedoms Act 2012(b).

(4) In these Regulations “the 2007 Order” means the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

Amendment of the Safeguarding Vulnerable Groups (Barred List Prescribed Information) Regulations (Northern Ireland) 2008

2. The Safeguarding Vulnerable Groups (Barred List Prescribed Information) Regulations (Northern Ireland) 2008(c) are amended as follows.

3. In regulation 2 omit the definitions of “the unique identification number accorded to the monitoring application or referral” and “the Access Northern Ireland disclosure number”.

(a) S.I. 2007/1351 (N.I. 11). Articles 37(1), 38(1) and 39(2) were amended by section 115(1) and (2) of, and paragraphs 75, 94, 95 and 96 of Schedule 9 and Part 5 of Schedule 10 to, the Protection of Freedoms Act 2012; Article 41(1) and (5) was amended by sections 78 and 115(2) of, and paragraph 14(3) of Schedule 7 and Part 5 of Schedule 10 to, the Protection of Freedoms Act 2012; Article 47(1) and (5) was amended by sections 78 and 115(2) of, and paragraph 13(1) of Schedule 7 and Part 5 of Schedule 10 to, the Protection of Freedoms Act 2012; Article 52A was inserted by section 91 of the Policing and Crime Act 2009 (c. 26) and amended by section 78 of, and paragraph 14 of Schedule 7 to, the Protection of Freedoms Act 2012. There are other amendments but none relevant to these Regulations.

(b) 2012. c. 9.

(c) S.R. 2008 No. 202.

4. In regulation 2 for the definition of the “the Criminal Records Bureau disclosure number” substitute ““the criminal record certificate number” means the number relating to any criminal record certificate within the meaning of section 113A of the Police Act 1997^(a) or any enhanced criminal record certificate within the meaning of section 113B of the Police Act 1997.”

5. Omit regulation 4(d), (e) and (g).

6. For regulation 4(h) substitute—

“(h) the criminal record certificate number relating to the individual;”.

7. In regulation 5(c) for “duty”, in each place where it occurs, substitute “power”.

Amendment of the Safeguarding Vulnerable Groups (Barring Procedure) Regulations (Northern Ireland) 2008

8. The Safeguarding Vulnerable Groups (Barring Procedure) Regulations (Northern Ireland) 2008^(b) are amended as follows.

9. In regulation 3—

(a) in paragraph (1) omit “removal from, or”;

(b) in paragraph (5) omit “removal from, or”.

Amendment of the Safeguarding Vulnerable Groups (Prescribed Information) Regulations (Northern Ireland) 2009

10. The Safeguarding Vulnerable Groups (Prescribed Information) Regulations 2009^(c) are amended as follows.

11. In regulation 2(1) in the definition of “employment” omit “or controlled”.

12. In regulation 3—

(a) omit “and responsible persons” in the heading;

(b) omit “and (b)”.

13. In regulation 4(2)(e) omit “or controlled activity”.

14. In regulation 4(2)(f)(i), (h) and (i) omit “or controlled”.

15. Omit regulations 6, 8 and 10.

16. In paragraph 1 of the Schedule omit sub-paragraph (g).

17. In paragraph 2 of the Schedule omit “or controlled”.

18. In paragraph 4(h) of the Schedule omit “or controlled”.

19. In paragraph 6 of the Schedule for “37, 38, 41, 43 or 47” substitute “37 or 38”.

20. In paragraph 9 of the Schedule after “such proceedings” insert “, and including proceedings commenced under the Children (Northern Ireland) Order 1995^(d)”.

(a) 1997 c.50. Section 113A 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 of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006 (c. 47), section 50 of the Criminal Justice and Immigration Act 2008 (c. 4), S.I. 2009/203, and sections 79(2), 80(1) and 115(1) and (2) of, and paragraphs 35 and 36 of Schedule 9 and Parts 5 and 6 of Schedule 10 to, the Protection of Freedoms Act 2012; section 113B 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 of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006, section 50 of the Criminal Justice and Immigration Act 2008, S.I. 2009/203, and sections 79(2), 80(1), 82 and 115(1) and (2) of, and paragraphs 35 and 37 of Schedule 9 and Parts 5 and 6 of Schedule 10 to, the Protection of Freedoms Act 2012.

(b) S.R. 2008 No. 203.

(c) S.R. 2009 No. 40.

(d) S.I. 1995/755 (N.I. 2).

Amendment of the Safeguarding Vulnerable Groups (Miscellaneous Provisions) Regulations (Northern Ireland) 2009

21. The Safeguarding Vulnerable Groups (Miscellaneous Provisions) Regulations (Northern Ireland) 2009(a) are amended as follows.

22. Omit regulations 3 and 5.

Regulated activity relating to vulnerable adults

23. The conveying of adults who need to be conveyed by reason of age, illness or disability by the following persons in the course of their employment is regulated activity relating to vulnerable adults under paragraph 7(1)(f) of Schedule 2 to the 2007 Order(b)—

- (a) any person who is employed as a hospital porter or a person undertaking the transfer of patients or clients;
- (b) any person who is employed within an emergency department undertaking or assisting with the transfer of patients or clients;
- (c) any person who is employed by the Northern Ireland Ambulance Service Health and Social Care Trust undertaking or assisting with the transfer of patients or clients;
- (d) any driver employed in the Patient Transport Service(c) undertaking or assisting with the transport of patients or clients.

24. The conveying, or assistance provided in the conveying, of any adult who needs to be conveyed by reason of age, illness or disability is regulated activity relating to vulnerable adults under paragraph 7(1)(f) of Schedule 2 to the 2007 Order in the following circumstances—

- (a) the conveying is on behalf of an organisation, whether or not the person who does, or assists in, such conveying is employed by that organisation;
- (b) the conveying is to or from a place in which the adult will receive, or has received, health care (as defined in paragraph 7(2) of Schedule 2 to the 2007 Order(d)), relevant personal care (as defined in paragraph 7(3B) of Schedule 2 to the 2007 Order(e)) or relevant social work (as defined in paragraph 7(3C) of Schedule 2 to the 2007 Order(f)); and
- (c) the person does, or assists in, such conveying for the purpose of enabling the adult to receive that health care, relevant personal care or relevant social work (as the case may be).

25. The provision of psychotherapy or counselling, but not life coaching, to an adult which is related to health care the adult is receiving from, or under the direction or supervision of, a health care professional as defined in paragraph 7(3) of Schedule 2 to the 2007 Order(g) is regulated activity relating to vulnerable adults under paragraph 7(1)(g) of Schedule 2 to the 2007 Order(h).

(a) S.R. 2009 No. 306.

(b) Paragraph 7(1)(f) of Schedule 2 to the 2007 Order was substituted by section 78 of, and paragraph 3(2) of Schedule 7 of, the Protection of Freedoms Act 2012.

(c) Non-emergency patient transport services, known as the Patient Transport Service, are typified by the non-urgent, planned, transportation of patients with a medical need for transport to and from a premises providing NHS healthcare and between NHS healthcare providers.

(d) Paragraph 7(2) of Schedule 2 to the 2007 Order was substituted by section 78 of, and paragraph 3(2) of Schedule 7 of, the Protection of Freedoms Act 2012.

(e) Paragraph 7(3B) of Schedule 2 to the 2007 Order was inserted by section 78 of, and paragraph 3(2) of Schedule 7 of, the Protection of Freedoms Act 2012.

(f) Paragraph 7(3C) of Schedule 2 to the 2007 Order was inserted by section 78 of, and paragraph 3(2) of Schedule 7 of, the Protection of Freedoms Act 2012.

(g) Paragraph 7(3) of Schedule 2 to the 2007 Order was substituted by section 78 of, and paragraph 3(2) of Schedule 7 of, the Protection of Freedoms Act 2012.

(h) Paragraph 7(1)(g) of Schedule 2 to the 2007 Order was substituted by section 78 of, and paragraph 3(2) of Schedule 7 of, the Protection of Freedoms Act 2012.

Provision of information to the police: prescribed purposes

26. The disclosure of information by the relevant chief officer under section 113B(4) of the Police Act 1997 is prescribed under section 52A(1)(d) of the 2007 Order.

Home Office
14th August 2012

James Brokenshire
Parliamentary Under Secretary of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make a number of changes to existing regulations under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (“the 2007 Order”) which are consequential upon the changes to the 2007 Order in Schedule 7 to the Protection of Freedoms Act 2012 (“the 2012 Act”). These Regulations also make a number of new provisions.

Regulations 2 to 7 amend the Safeguarding Vulnerable Groups (Barred List Prescribed Information) Regulations (Northern Ireland) 2008 which set out the information which the Independent Safeguarding Authority (“ISA”) is obliged to keep in relation to any individual who is barred.

Regulation 3 omits a definition which was linked to monitoring applications which were to be made under Article 28 of the 2007 Order. Monitoring (including Article 28) is repealed by paragraph 6 of Schedule 7 to the 2012 Act.

Regulation 4 substitutes a new definition which was also linked to monitoring and regulation 6 makes a consequential amendment in light of the new definition.

Regulation 5 makes further amendments consequential upon the repeal of monitoring.

Regulation 7 makes amendments consequential upon the changes to Articles 43 and 47 of the 2007 Order made by paragraphs 12(1) and 13(1) of Schedule 7 to the 2012 Act which change the duty on keepers of registers (under Article 43 of the 2007 Order) and on supervisory authorities (under Article 47 of the 2007 Order) to refer information to the ISA into a power to refer information to the ISA.

Regulations 8 and 9 amend the Safeguarding Vulnerable Groups (Barring Procedure) Regulations (Northern Ireland) 2008 to reflect the changes made to the barring procedure by paragraph 4 of Schedule 7 to the 2012 Act. Under paragraphs 2 and 8 of Schedule 1 to the 2007 Order (as amended by paragraph 4 of Schedule 7 to the 2012 Act), individuals will no longer make representations in order to be removed from the barred list(s), rather they will make representations in order not to be included in the barred list(s).

Regulations 10 to 20 amend the Safeguarding Vulnerable Groups (Prescribed Information) Regulations (Northern Ireland) 2009 in light of changes made by the 2012 Act. These regulations set out the information which is to be provided to the ISA by various bodies under various provisions in the 2007 Order.

Regulations 11, 12, 13, 14, 17 and 18 make amendments which are consequential upon the repeal of controlled activity under paragraph 5 of Schedule 7 to the 2012 Act. Regulations 15 and 19 remove the regulations which concerned information which Education and Library Boards and Health and Social Care Bodies, keepers of relevant registers and supervisory authorities were

obliged to provide to the ISA under Articles 41, 43 and 47 of the 2007 Order in light of the amendments made by paragraphs 12(1), 13(1) and 14(3) of Schedule 7 to the 2012 Act, which removes these obligations and replaces them with a power to refer information to the ISA.

Regulation 16 makes an amendment which is consequential upon the repeal of monitoring under paragraph 6 of Schedule 7 to the 2012 Act.

Regulation 20 makes an amendment for the purpose of clarifying the obligation on various bodies to provide details of any court proceedings. All court proceedings taken in relation to the person's conduct are included in the obligation and this amendment simply emphasises, for the avoidance of doubt, that this includes proceedings under the Children (Northern Ireland) Order 1995.

Regulations 21 and 22 amend the Safeguarding Vulnerable Groups Act (Miscellaneous Provisions) Regulations (Northern Ireland) 2009 ("the 2009 Regulations"). Article 3 of the 2007 Order defined who was a vulnerable adult in some detail and enabled regulations to be made in relation to that definition. Since Article 3 of the 2007 Order is repealed by paragraph 2 of Schedule 7 to the 2012 Act, regulation 3 of the 2009 Regulations is revoked. In addition, regulations can be made under Schedule 2 to the 2007 Order to define further the scope of regulated activity in relation to vulnerable adults. In light of the changes to the definition of regulated activity in relation to vulnerable adults made by paragraph 3 of Schedule 7 to the 2012 Act, regulation 5 of the 2009 Regulations, which further defined the scope, is also revoked.

Regulations 23 to 24 prescribe the circumstances in which conveying an adult is regulated activity relating to vulnerable adults. The circumstances are that the conveying is being done by someone who is employed as a hospital porter, emergency care assistant, an ambulance technician or is employed by the Patient Transport Service (or someone employed to assist in this conveying) or that the person doing the conveying is doing so on behalf of an organisation (rather than merely in the capacity of a friend or relative, for example) whether employed by the organisation or doing so as a volunteer, and the adult is being conveyed either to or from a place in which the adult will receive, or has received, health care, relevant personal care or relevant social work where the purpose of the conveying was to ensure they could receive that care (therefore excluding adults travelling, for example, on a public bus whose purpose is general conveyance of the public).

Regulation 25 prescribes circumstances in which a person engages in regulated activity that is connected with the provision of health care to adult. Someone who provides psychotherapy or counselling (but not life coaching) to an adult, when that psychotherapy or counselling is related to health care which the adult is receiving from (or under the direction of) a health care professional, is engaging in a regulated activity.

Regulation 26 makes provision under Article 52A(1)(d) of the 2007 Order which was inserted by paragraph 14 of Schedule 7 to the 2012 Act. Article 52A(1)(d) enables the police to use information given to them by the ISA for prescribed purposes and regulation 26 provides that the police can use information given to them by the ISA for the purposes of disclosing it as relevant information on an enhanced criminal record certificate under section 113B(4) of the Police Act 1997.

An impact assessment has not been produced for this rule as no impact on the private, voluntary or public sector is foreseen.

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