

STATUTORY INSTRUMENTS

2007 No. 1351

The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

Restrictions on participating in regulated activity

VALID FROM 12/10/2009

Barred person not to engage in regulated activity

- 11.**—(1) An individual commits an offence if he—
- (a) seeks to engage in regulated activity from which he is barred;
 - (b) offers to engage in regulated activity from which he is barred;
 - (c) engages in regulated activity from which he is barred.
- (2) A person guilty of an offence under paragraph (1) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.
- (3) It is a defence for a person charged with an offence under paragraph (1) to prove that he did not know, and could not reasonably be expected to know, that he was barred from that activity.
- (4) It is a defence for a person charged with an offence under paragraph (1) to prove—
- (a) that he reasonably thought that it was necessary for him to engage in the activity for the purpose of preventing harm to a child or vulnerable adult (as the case may be),
 - (b) that he reasonably thought that there was no other person who could engage in the activity for that purpose, and
 - (c) that he engaged in the activity for no longer than was necessary for that purpose.
- (5) For the purposes of this Article, Schedule 2 is modified as follows—
- (a) in paragraph 1, sub-paragraphs (1)(b) and (2)(a) must be disregarded;
 - (b) in paragraph 7(1), the words “if it is carried out frequently by the same person or the period condition is satisfied” must be disregarded;
 - (c) in paragraph 7(4), paragraph (a) must be disregarded.

PROSPECTIVE

Person not to engage in regulated activity unless subject to monitoring

- 12.**—(1) An individual commits an offence if—

Status: Point in time view as at 13/03/2009. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, Restrictions on participating in regulated activity is up to date with all changes known to be in force on or before 15 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) he engages in regulated activity with the permission of a regulated activity provider, and
 - (b) he is not subject to monitoring in relation to that activity.
- (2) An individual commits an offence if—
- (a) he engages in an activity which is a regulated activity by virtue of paragraph 1(3) of Schedule 2, and
 - (b) he is not subject to monitoring in relation to regulated activity relating to children.
- (3) An individual commits an offence if—
- (a) he acts as a member of the governing body of an educational establishment mentioned in paragraph (5), and
 - (b) he is not subject to monitoring in relation to regulated activity relating to children.
- (4) A person guilty of an offence under paragraph (1), (2) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) The establishments are—
- (a) an educational institution which is exclusively or mainly for the provision of full-time education to children;
 - (b) a nursery school within the meaning of the Education and Libraries (Northern Ireland) Order 1986 (NI 3).
- (6) A person does not commit an offence under paragraph (1) or (2) if he has not attained the age of 16.
- (7) A person does not commit an offence under paragraph (1) if, in relation to any continuous period for which he is permitted to engage in the activity—
- (a) the permission is first given before the commencement of this Article, and
 - (b) it continues to have effect after such commencement.
- (8) Where paragraph (7) applies to a person who is engaged in regulated activity which is relevant HSS employment for the purposes of Article 21(1)(d), he does not commit an offence under paragraph (1) if he also engages in any other such regulated activity as mentioned in Article 21.
- (9) Paragraph (7) does not apply in respect of permission which continues to have effect after such date as the Secretary of State specifies by order.
- (10) A person does not commit an offence under paragraph (1) if the regulated activity—
- (a) is regulated activity relating to vulnerable adults, and
 - (b) falls within Article 20.
- [^{F1}(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.]

(12) Paragraph (11) does not apply in respect of an appointment which continues to have effect after such date as the Secretary of State specifies by order.

(13) It is a defence for a person charged with an offence under paragraph (1), (2) or (3) to prove that he did not know, and could not reasonably be expected to know, that he was not subject to monitoring in relation to the activity.

(14) In determining what is the appropriate sentence to pass in respect of a person who is convicted of an offence under this Article in a case where the regulated activity falls within paragraph 1(1) or (2) or 7(1) or (4) of Schedule 2 the court must consider the extent to which the

offender had regard to any guidance issued by the Secretary of State as to the circumstances in which an activity is carried out frequently.

Textual Amendments

- F1** Art. 12(11) substituted (1.4.2010) by Safeguarding Vulnerable Groups (Regulated Activity, Devolution Alignment and Miscellaneous Provisions) Order (Northern Ireland) 2010 (S.R. 2010/30), art. 16 (but this amendment cannot take effect until the commencement of S.I. 2007/1351, art. 12)

VALID FROM 12/10/2009

Use of barred person for regulated activity

- 13.—**(1) A person commits an offence if—
- (a) he permits an individual (B) to engage in regulated activity from which B is barred,
 - (b) he knows or has reason to believe that B is barred from that activity; and
 - (c) B engages in that activity.
- (2) A personnel supplier commits an offence if—
- (a) he supplies an individual (B) to another (P),
 - (b) he knows or has reason to believe that P will make arrangements for B to engage in regulated activity from which B is barred, and
 - (c) he knows or has reason to believe that B is barred from that activity.
- (3) A person guilty of an offence under this Article is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.
- (4) It is a defence for a person charged with an offence under this Article to prove—
- (a) that he reasonably thought that it was necessary for the barred person to engage in the activity for the purpose of preventing harm to a child or vulnerable adult (as the case may be),
 - (b) that he reasonably thought that there was no other person who could engage in the activity for that purpose, and
 - (c) that the barred person engaged in the activity for no longer than was necessary for that purpose.
- (5) For the purposes of this Article, Schedule 2 is modified as follows—
- (a) in paragraph 1, sub-paragraphs (1)(b) and (2)(a) must be disregarded;
 - (b) in paragraph 7(1), the words “if it is carried out frequently by the same person or the period condition is satisfied” must be disregarded;
 - (c) in paragraph 7(4), paragraph (a) must be disregarded.

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PROSPECTIVE

Use of person not subject to monitoring for regulated activity

14.—(1) A regulated activity provider commits an offence if—

- (a) he permits an individual (B) to engage in regulated activity in relation to which B is not subject to monitoring,
- (b) he knows or has reason to believe that B is not subject to monitoring in relation to that activity, and
- (c) B engages in that activity.

(2) A personnel supplier commits an offence if—

- (a) he supplies an individual (B) to another (P),
- (b) he knows or has reason to believe that P will make arrangements for B to engage in regulated activity in relation to which B is not subject to monitoring, and
- (c) he knows or has reason to believe that B is not subject to monitoring in relation that activity.

(3) For the purposes of paragraph (2)(b), Schedule 2 is modified as follows—

- (a) in paragraph 1, sub-paragraphs (1)(b) and (2)(a) must be disregarded;
- (b) in paragraph 7(1), the words “if it is carried out frequently by the same person or the period condition is satisfied” must be disregarded;
- (c) in paragraph 7(4), paragraph (a) must be disregarded.

(4) A person guilty of an offence under paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person does not commit an offence under paragraph (1) or (2) if he has not attained the age of 16.

(6) A person does not commit an offence under paragraph (1) if, in relation to any continuous period for which B is permitted to engage in the regulated activity—

- (a) the permission is first given before the commencement of this Article, and
- (b) it continues to have effect after such commencement.

(7) A person does not commit an offence under paragraph (1) if—

- (a) he falls within Article 21,
- (b) the permission mentioned in paragraph (1) commences at a time when B is engaged in relevant HSS employment mentioned in Article 21(1)(b) in circumstances mentioned in paragraph (6), and
- (c) for the duration of the permission mentioned in paragraph (1), B continues to be engaged in that relevant HSS employment.

(8) Paragraph (6) or (7) does not apply in respect of permission which continues to have effect after such date as the Secretary of State specifies by order.

(9) A person does not commit an offence under paragraph (1) or (2) if the regulated activity—

- (a) is regulated activity relating to vulnerable adults, and
- (b) falls within Article 20.

(10) In determining what is the appropriate sentence to pass in respect of a person who is convicted of an offence under this Article in a case where the regulated activity falls within paragraph 1(1) or (2) or 7(1) or (4) of Schedule 2 the court must consider the extent to which the

offender had regard to any guidance issued by the Secretary of State as to the circumstances in which an activity is carried out frequently.

(11) A person is not guilty of an offence by virtue of paragraph (2) in relation to any period during which B is continuously supplied to another if the period begins before the commencement of this Article.

(12) Paragraph (11) does not have effect in respect of permission which continues to have effect after such date as the Secretary of State specifies by order.

Regulated activity provider: failure to check

15.—(1) A regulated activity provider commits an offence if—

- (a) he permits an individual (B) to engage in regulated activity,
- (b) B engages in the activity, and
- (c) he fails to ascertain whether B is subject to monitoring in relation to the activity.

(2) A regulated activity provider ascertains whether B is subject to monitoring only if—

- (a) he obtains an appropriate verification in accordance with Part I of Schedule 3 and neither of Parts II and III of that Schedule is prescribed in relation to him,
- (b) he obtains an appropriate verification in accordance with Part II of that Schedule and that Part is prescribed in relation to him, or
- (c) he obtains an appropriate verification in accordance with Part III of that Schedule and that Part is prescribed in relation to him.

(3) A person does not commit an offence under paragraph (1) if the regulated activity—

- (a) is regulated activity relating to vulnerable adults, and
- (b) falls within Article 20.

(4) A person does not commit an offence under paragraph (1) if he falls within Article 21.

(5) A person does not commit an offence under paragraph (1) if B has not attained the age of 16.

(6) A person does not commit an offence under paragraph (1) if, in relation to any continuous period for which B is permitted to engage in the regulated activity—

- (a) the permission is first given before the commencement of this section, and
- (b) it continues to have effect after such commencement.

(7) Paragraph (6) does not apply in respect of permission which continues to have effect after such date as the Secretary of State specifies by order.

(8) A person commits an offence if—

- (a) he provides written confirmation under Schedule 3 that is false in any material respect, and
- (b) he either knows that it is false or is reckless as to whether it is false.

(9) A person guilty of an offence under paragraph (1) or (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) In determining what is the appropriate sentence to pass in respect of a person who is convicted of an offence under this Article in a case where the regulated activity falls within paragraph 1(1) or (2) or 7(1) or (4) of Schedule 2 the court must consider the extent to which the offender had regard to any guidance issued by the Secretary of State as to the circumstances in which an activity is carried out frequently.

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Commencement Information

- I1** Art. 15 partly in operation; art. 15 not in operation at date of making see art. 1(3); art. 15(2) in operation for certain purposes at 29.5.2008 by S.R. 2008/233, art. 4(a)

Personnel suppliers: failure to check

16.—(1) Schedule 4 (employment businesses: failure to check) has effect.

(2) The Secretary of State may by order make provision (including provision amending this Order) corresponding to Schedule 4 in relation to the supply of persons by a personnel supplier otherwise than in the course of carrying on an employment business.

Commencement Information

- I2** Art. 16 partly in operation; art. 16 not in operation at date of making see art. 1(3); art. 16(1)(2) in operation for certain purposes at 29.5.2008 by S.R. 2008/233, art. 4(y), art. 5(d)(q)

Educational establishments: check on members of governing body

17.—(1) The appropriate officer (P) commits an offence if he fails in the prescribed period to make a check in accordance with Article 19 relating to any person (B) who is appointed to the governing body of an educational establishment mentioned in Article 12(5).

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A person does not commit an offence under paragraph (1) if, in relation to any continuous period for which B is a member of the governing body of the establishment—

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

(4) Paragraph (3) does not apply in respect of an appointment which continues to have effect after such date as the Secretary of State specifies by order.

(5) An appropriate officer is such person as is prescribed.

Commencement Information

- I3** Art. 17 partly in operation; art. 17 not in operation at date of making see art. 1(3); art. 17(1)(5) in operation for certain purposes at 29.5.2008 by S.R. 2008/233, art. 4(b)

Office holders: offences

18.—(1) The Secretary of State may by regulations provide that a person commits an offence if—

- (a) he engages in activity that is regulated activity by virtue of paragraph 1(7) or 7(9) of Schedule 2, and
- (b) he is not subject to monitoring in relation to the activity.

(2) The Secretary of State may by regulations provide that a prescribed person (P) commits an offence if he fails in the prescribed period to make a check in accordance with Article 19 in relation to another person (B) appointed to a position mentioned in paragraph 4(1) or 8(1) of Schedule 2.

(3) Regulations under paragraph (1) or (2) may provide for defences to the offence.

(4) An offence created by regulations under this Article is punishable on summary conviction with a maximum fine not exceeding level 5 on the standard scale.

Commencement Information

I4 Art. 18 partly in operation; art. 18 not in operation at date of making see art. 1(3); art. 18(1)(2)(3) in operation for certain purposes at 29.5.2008 by S.R. 2008/233, art. 4(c)

PROSPECTIVE

Articles 17 and 18: checks

19.—(1) This Article has effect for the purposes of Articles 17 and 18.

(2) P makes a check in accordance with this Article if—

- (a) he obtains relevant information relating to B in pursuance of an application under Article 32, or
- (b) he obtains a copy of an enhanced criminal record certificate relating to B issued in relation to P.

(3) P makes a check in accordance with this Article if—

- (a) an enhanced criminal record certificate relating to B is issued during the prescribed period,
- (b) the application for the certificate is countersigned on behalf of P by a registered person (within the meaning of Part 5 of the Police Act 1997 (c. 50)), and
- (c) P obtains from the registered person the information mentioned in paragraph (4) derived from the certificate.

(4) The information is—

- (a) whether B is subject to monitoring, and
- (b) whether [F²ISA] is considering whether to include B in a barred list in pursuance of paragraph 3 or 5 or (as the case may be) 9 or 11 of Schedule 1.

(5) In paragraph (2)(a) “relevant information” means—

- (a) in relation to a person appointed to a position mentioned in paragraph 4(1) of Schedule 2, relevant information relating to children (within the meaning of Article 33);
- (b) in relation to a person appointed to a position mentioned in paragraph 8(1) of Schedule 2, relevant information relating to vulnerable adults (within the meaning of Article 33).

(6) For the purposes of paragraph (2)(b) an enhanced criminal record certificate is issued in relation to P only if—

- (a) he countersigned the application for the certificate as a registered person for the purposes of Part 5 of the Police Act 1997, or
- (b) the application was countersigned on his behalf by such a person.

(7) In this Article “enhanced criminal record certificate” means—

- (a) in relation to a person appointed to a position mentioned in paragraph 4(1) of Schedule 2, an enhanced criminal record certificate issued under the Police Act 1997 containing suitability information relating to children (within the meaning of section 113BA of that Act);

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- (b) in relation to a person appointed to a position mentioned in paragraph 8(1) of Schedule 2, an enhanced criminal record certificate issued under that Act containing suitability information relating to vulnerable adults (within the meaning of section 113BB of that Act).

Textual Amendments

- F2** Words in Order substituted (12.11.2009) by [Policing and Crime Act 2009 \(c. 26\)](#), ss. **81(2)(3)(o)(i)**, **116(5)(a)**

Status:

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