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(**1**):

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.

(**1**) 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.

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.

(2) A responsible person(**2**) ("RP") may only permit another ("A") to engage in a controlled activity relating to children(**3**) 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(**4**) either—

(i) an enhanced criminal record certificate which includes suitability information relating to children (within the meaning of section 113BA of that Act(**5**)), or

(ii) a notification that A is—

(aa) not barred from regulated activity relating to children(**6**),

(bb) not included in the list kept under section 1 of the Protection of Children Act 1999(**7**), and

(cc) not subject to a direction made under section 142 of the Education Act 2002(**8**);

(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.

(**2**) Section 23(3) of the Act provides the meaning of a responsible person.
(**3**) Section 21 of the Act provides the meaning of a controlled activity relating to children.
(**4**) 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.
(**5**) 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.
(**6**) Section 3(2) of the Act specifies when a person is barred from regulated activity relating to children.
(**7**) 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").
(**8**) 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.

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).

(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(**9**)), or

(ii) a notification that A is—

(aa) not barred from regulated activity relating to vulnerable adults(**10**), and

(bb) not included in the list kept under section 81 of the Care Standards Act 2000(**11**);

(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)(**12**) 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—

(**9**) Section 113BB was inserted by section 63(1) of, and paragraph 14(1) and (4) of Part 2 of Schedule 9 to, the Act.
(**10**) Section 3(3) of the Act specifies when a person is barred from regulated activity relating to vulnerable adults.
(**11**) 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.
(**12**) 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 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(**13**) 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(**14**) 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.

(**13**) 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.

(**14**) 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).