



# Explanatory Notes to Safeguarding Vulnerable Groups Act 2006

2006 Chapter 47

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

## **SAFEGUARDING VULNERABLE GROUPS ACT**

# 2006

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## EXPLANATORY NOTES

### INTRODUCTION

1. These explanatory notes relate to the Safeguarding Vulnerable Groups Act which received Royal Assent on 8<sup>th</sup> November 2006. They have been prepared by the Department for Education and Skills in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### SUMMARY AND BACKGROUND

3. The current system for vetting people who wish to work with children or vulnerable adults operates through employers obtaining criminal record certificates issued by the Criminal Records Bureau ("CRB disclosures") for new job applicants. CRB disclosures give employers information about an individual's criminal records history, which informs their assessments about the individual's suitability to work with children or vulnerable adults.

4. There are also three separate lists of persons who are barred from working with children or, as the case may be, vulnerable adults. These lists operate under different legislation and with different criteria and procedures: List 99 (a list of those in respect of whom directions under section 142 of the Education Act 2002 have been made), the Protection of Children Act (POCA) List (maintained under the Protection of Children Act 1999) and the Protection of Vulnerable Adults (POVA) List (maintained under Part 7 of the Care Standards Act 2000). Disqualification orders made by a court (under Part 2 of the Criminal Justice and Court Services Act 2000) also bar individuals from working with children.

5. The Bichard Inquiry Report (June 2004), available from <http://www.bichardinquiry.org.uk/>, identified systemic failures in current vetting and barring systems. These included the following factors:

- inconsistent decisions were being made by employers on the

basis of CRB disclosure information

- CRB disclosure information is only certain to be accurate on the day of issue
- there are inconsistencies between List 99, the POCA list and POVA list
- the current barring system is reactive to harmful behaviour rather than preventative
- there are inconsistencies between police authorities in the disclosure of police information

6. This Act provides the legislative framework for a new vetting and barring scheme for people who work with children and vulnerable adults. A public consultation for the new scheme, *Making Safeguarding Everybody's Business: A Post-Bichard Vetting Scheme* (Ref: 1485-2005DOC-EN), ran from 5 April - 5 July 2005. This consultation paper and a summary of the responses to it can be found at [www.dfes.gov.uk/consultations](http://www.dfes.gov.uk/consultations).

7. The purpose of the new scheme is to minimise the risk of harm posed to children and vulnerable adults by those that might seek to harm them through their work (paid or unpaid) (whether they fall into the category of "regulated activity", see paragraphs 41 to 47, or "controlled activity", see paragraphs 98 to 103; see also the glossary in Annex A for further explanation). It seeks to do this by barring unsuitable individuals not just on the basis of referrals but also at the earliest possible opportunity as part of a centralised vetting process that all those working closely with children and/or vulnerable adults will need to go through.

## **Overview**

8. The Act provides that:

- There will be two barred lists - one for those who are barred from engaging in regulated activity with children (the "children's barred list"), and one for those who are barred from engaging in regulated activity with vulnerable adults (the "adults' barred list").
- There will be an Independent Barring Board ("IBB"). The IBB will maintain the children's barred list and adults' barred list and will make decisions about whether an individual should be included in one or both barred lists.
- There will be a right of appeal to the Care Standards Tribunal, with the permission of the Tribunal, against

inclusion in a barred list on a point of law or on a finding of fact made by the IBB.

- There will be four routes to inclusion on one or both of the barred lists (**see diagram at Annex D**).
- Automatic inclusion on one or both of the barred lists as a result of receiving a caution or conviction for specified offences, or other criteria which may be specified (such as orders, foreign orders or directions, and inclusion on a foreign barred list). There will be no right for the individual to make representations nor a right of appeal in these cases.
- Automatic inclusion on one or both of the barred lists as a result of receiving a caution or conviction for certain other specified offences or as a result of having met some certain other specified criteria. There will be a right to make representations and a right of appeal following inclusion.
- Specified behaviour (the term "relevant conduct" is used in the Act) that leads to consideration for inclusion on one or both of the barred lists. This includes, for example, conduct which harms a child in the case of the children's barred list, or conduct which harms a vulnerable adult in the case of the adults' barred list, or conduct involving child pornography for both lists.
- Risk of harm: where evidence suggests that an individual may present a risk of harm to children or vulnerable adults, this will lead to consideration for inclusion on the appropriate list.
- An individual who is included in the children's barred list must not engage in regulated activity in relation to children. An individual who is included in the adults' barred list must not engage in regulated activity in relation to vulnerable adults.
- Broadly, regulated activity will cover a range of specified activities that provide an opportunity for close contact with children or vulnerable adults, other activities in key settings such as schools and care homes which provide an opportunity for contact and key positions of responsibility such as the Children's Commissioner and the Director of Adult Social Services.
- There are a series of criminal offences to:
  - a. prevent barred individuals from engaging in regulated activity in relation to children or vulnerable adults

- b. ensure that people permitted to engage in regulated activity in relation to children or vulnerable adults with the permission of a "regulated activity provider" are subject to monitoring
  - c. ensure that relevant employers check an individual's status in the scheme before permitting an individual to engage in regulated activity in relation to children or vulnerable adults
- To become subject to monitoring individuals will need to make an application to the Secretary of State, in the guise of the Criminal Records Bureau (CRB).
  - The Act also confers power on the Secretary of State to make regulations about controlled activity. This covers certain activity other than regulated activity. There is no current intention to prevent a barred individual from engaging in controlled activity. But in part the regulations will be used so as to require employers (and others with responsibility for managing controlled activity) to put in place appropriate safeguards to manage the risks posed by barred individuals.
  - Broadly, controlled activity covers support work in general health settings, further education settings and adult social care settings. It also covers work which gives a person the opportunity for access to sensitive records about children and vulnerable adults, including education and social services records.

### **How will the new scheme work?**

9. These paragraphs provide a very brief overview of how the new scheme will work and will help to put into context the overview of the legislation given above. **They need to be read in conjunction with the diagram at annex B.**

10. Those who are closely working, or applying to work, with children or vulnerable adults will be required to make an application to the Secretary of State to be "subject to monitoring" (see the glossary at Annex A). This will cover everyone engaging in what the Act refers to as "regulated activity" with the permission of a "regulated activity provider". (The intention is that employers engaging individuals in "controlled activity" will also in most cases need to ensure that they are subject to monitoring, although this requirement will be placed on employers through regulations). The Act allows for the phasing in of applications from existing members of the workforce.

11. The Secretary of State, using the Criminal Records Bureau (CRB), will then search the Police National Computer for cautions

and convictions and make enquiries of local police forces to obtain other relevant information.

12. Where the Secretary of State's enquiries reveal that a person satisfies one of the criteria that lead to automatic inclusion in a barred list, he will refer the matter to the IBB so that the person can be included in the relevant barred list. The Secretary of State will also pass details of relevant cautions and convictions together with all information received from local police forces to the IBB, which the IBB can then consider in relation to inclusion in a barred list. Where a person is included in a barred list, he ceases to be subject to monitoring (if he was previously) and is not able to engage in regulated activity. Except in the most serious cases, individuals will have the opportunity to make representations about why they should not be barred on the basis of this information.

13. At appropriate intervals, the Secretary of State must repeat the searches and enquiries referred to above. If new information comes to light about a person who is subject to monitoring, the Secretary of State will give the information to the IBB as outlined above. The IBB may also have cause to consider including a person in a barred list on the basis of referrals from employers, local authorities, professional bodies and supervisory authorities (**see diagram at annex C**). An employer may register to be notified if an employee ceases to be subject to monitoring. Where this is the case the employer will then be informed of this by the Secretary of State, in the guise of the CRB.

## **TERRITORIAL EXTENT**

14. The Act extends to England and Wales. This reflects the current position in relation to POCA, POVA and List 99.

15. The following provisions in the Act extend to Northern Ireland: the establishment of the IBB; provisions relating to the information monitor for the purposes of this Act and the Police Act 1997; provisions amending the Police Act 1997; and, so far as relevant to these provisions, general provisions relating to interpretation and secondary legislation. The intention is that the remainder of the provisions in the Act will be mirrored by separate Northern Ireland legislation. This will enable provisions specific to Northern Ireland to be made.

16. The Act does not extend to Scotland. However it does provide for appropriate information sharing to be established with the parallel scheme that is to be set up in Scotland.

17. The Act may by Order in Council be extended to the Isle of Man or the Channel Islands.

18. These arrangements are intended to enable vetting and barring processes to operate coherently across the UK.

## **TERRITORIAL APPLICATION: WALES**

19. The Act confers various powers to make subordinate legislation. In general, these are exercisable by the Secretary of State. Section 56 alters this general position. In certain cases, power to make subordinate legislation in relation to Wales is exercisable by the Welsh Ministers (instead of by the Secretary of State). In other cases, the power remains exercisable by the Secretary of State but only with the consent of the Welsh Ministers. And in yet other cases, the power remains exercisable by the Secretary of State but he is required to consult the Welsh Ministers before exercising it. Section 56 of the Act sets out which sections of the Act fall into each of these categories.

20. In addition, paragraph 2 (3) (d) of Schedule 8 enables the Welsh Ministers to set the procedure under which certain applications may be made to the General Teaching Council for Wales for registration under the Teaching and Higher Education Act 1998. Finally, there is also provision in paragraph 23 of Schedule 3 for the IBB to provide the Welsh Ministers with information.

## **COMMENTARY ON SECTIONS AND SCHEDULES**

### **BARRING**

#### **Section 1: Independent Barring Board**

21. Section 1 establishes a statutory body to be known as the Independent Barring Board ("IBB"). The creation of the IBB meets the Ministerial commitment to transfer the responsibility for barring decisions from Ministers to a new independent board of experts.

#### **Schedule 1: Independent Barring Board**

22. This Schedule makes provision regarding the IBB. The IBB has core functions of determining whether to include an individual in a barred list, determining whether to remove an individual from a barred list and considering representations made under Schedule 3. These functions cannot be delegated outside the IBB, but can be delegated internally to allow the IBB's workload to be managed effectively. The IBB can delegate its non-core functions, such as administrative functions, to persons outside the IBB, for example to the CRB.

23. Schedule 1 provides for the IBB's membership and staffing arrangements. The Secretary of State will appoint the chairman and members, and the IBB will recruit its own staff. The IBB must

publish an annual report on the exercise of its functions, and the Secretary of State can also direct the IBB to submit a report to him on the exercise of any of its functions. The IBB's annual accounts are to be audited by the Comptroller and Auditor General and laid before Parliament.

24. Schedule 1 also provides for the IBB to be funded by the Secretary of State. Income from those applying to be monitored will be received by the Secretary of State (see sections 24) and a mechanism for funding the IBB on the basis of this income will be put in place.

## **Section 2: Barred lists**

25. This section provides that the IBB must establish and maintain two barred lists - a children's barred list and an adults' barred list. Schedule 3 makes provision regarding inclusion in the barred lists.

## **Schedule 3: Barred lists**

26. Part 1 sets out how someone may be included in the children's barred list. Part 2 covers the equivalent rules in relation to the adults' barred list. For each list there will be four types of cases:

a. Paragraphs 1 and 7 of the Schedule require the IBB to include individuals in the barred list automatically (with no right to make representations). This applies where an individual's case is referred to the IBB by the Secretary of State and criteria set out in regulations are met. The criteria which may be specified as requiring an individual's inclusion in a list automatically are set out in paragraph 24 of the Schedule. For the purposes of paragraphs 1 and 7 the criteria are likely to include being cautioned for, or convicted of, the most serious offences against vulnerable individuals.

b. Paragraphs 2 and 8 of the Schedule require the IBB to include individuals in the relevant barred list, but allow listed individuals then to make representations as to why they should be removed. Once again, this applies where an individual's case is referred to the IBB by the Secretary of State and criteria set out in regulations are met. The criteria which may be specified as requiring an individual's inclusion in a list automatically are set out in paragraph 24 of the Schedule. For the purposes of paragraph 2 and 8 the criteria are likely to include being cautioned for, or convicted of, serious offences against vulnerable individuals.

c. Paragraphs 3 and 9 are concerned with the inclusion of individuals in a barred list because of concerns regarding their behaviour. This includes cases where the IBB has information that an individual has engaged in behaviour which:

- harms, attempts to harm, puts at risk of harm or incites another to harm a child or vulnerable adult;
- involves child pornography or inappropriate conduct involving violent pornography; or
- is of an inappropriate sexual nature involving a child or vulnerable adult

The IBB, if minded to bar, will allow the individual to make representations and, having considered any such representations, decide whether the individual should be included in one or both barred lists.

d. Paragraphs 5 and 11 are concerned with an individual's inclusion in a barred list because of a perceived risk that they might cause harm to children or vulnerable adults. Where the IBB has information that an individual may be at risk of harming, attempting to harm, putting at risk of harm or inciting another to harm a child or vulnerable adult (but has yet to engage in such behaviour), IBB will, if minded to bar, allow the individual to make representations, and having considered any such representations decide whether the individual should be included in one or both barred lists.

e. Paragraphs 6 and 12 provide that the IBB must not include a person in the children's or adults' barred list where:

- Scottish Ministers have already made a decision to include or not to include the person in their equivalent barred list and the IBB has no new evidence.
- Prescribed conditions are met such that it is more appropriate for a person's case to be considered by Scottish Ministers. An example of a condition that may be prescribed is that the person lives and works in Scotland. Any regulations setting such conditions will be subject to the affirmative resolution procedure.

27. (Note: a person who is included in a corresponding list in Scotland (or Northern Ireland) will be barred from regulated activity in England and Wales by virtue of section 3(2) and (3)).

28. Part 3 sets out general provisions relating to the barred lists. Paragraph 13 places a duty on the IBB to consider all the information it receives and to decide whether it suggests that a person should be included in the lists. Where this information indicates a risk, then the IBB may consider the individual for inclusion in either or both lists.

29. Paragraph 14 ensures that the IBB must take all reasonable

steps to notify an individual when he has been included in a barred list.

30. Paragraph 15 allows for regulations to be made governing the procedure which the IBB must follow in making its barring decisions. This also enables time limits to be specified within which decisions must be taken, along with time limits within which IBB must carry out reviews and representations.

31. Paragraph 16 deals with representations. Any information which the IBB proposes to use to make a barring decision is to be made available to the relevant individual to give them a fair opportunity to make representations as to why they should not be barred.

32. Paragraph 17 allows for late representations to be made. This is designed for exceptional cases where, for example, the IBB is unable to locate the person under consideration and has therefore not been able to inform them that they are at risk of being barred. In this case late representations are allowed as of right. Alternatively, an individual may have been unwell, or unable to understand or respond to letters from the IBB, in which case the right to make representations will be dependent on the IBB granting permission.

33. Paragraph 18 makes provision for barred individuals to be able to apply to the IBB to have their case reviewed after the minimum prescribed period has elapsed. An application for a review can only happen with the IBB's permission. An application for permission may be allowed only if the individual's circumstances have changed since he was included in the list or last applied for permission.

34. Paragraph 19 provides the IBB with the power to obtain relevant police information in relation to individuals whose cases it is considering. The IBB is required to pay the police a fee determined by the Secretary of State for providing this information.

35. Paragraph 20(1) provides for information to flow from the Secretary of State to the IBB about particular individuals in connection with the current barring schemes. Paragraph 20(2) is the basis on which the information which the Secretary of State gathers in relation to a person who is subject to monitoring must be transferred to the IBB.

36. Paragraph 21 places a duty on the IBB to provide prescribed information to the Secretary of State about an individual who has been barred or that the Board is considering for barring. The Secretary of State, in the guise of the CRB, will perform the administrative function of actually adding the individual's name to the barred list. There is also the requirement in paragraph 21(c) for

the IBB to refer cases to the Secretary of State which come to its attention through the referral process and meet the prescribed criteria for automatic barring.

37. Paragraph 24 sets out the criteria that may be prescribed for automatic barring. This provision also ensures that individuals will not be barred automatically on the basis of any offences they have committed, or orders or directions that have been made in relation to them, before they reached the age of 18.

38. Paragraph 25 places a duty on the courts, when convicting an individual for an automatic barring offence or making a specified order against him, to inform the individual that a consequence of his conviction or order is that IBB will include him in the relevant barred list.

### **Section 3: Barred persons**

39. This section provides that an individual is barred from "regulated activity" if he is included in either of the lists set up by section 2, or in an equivalent list held in Northern Ireland or Scotland.

### **Section 4: Appeals**

40. This section provides for an appeal to the Care Standards Tribunal on a point of law or on a finding of fact made by the IBB against a decision of the IBB to include or keep someone in the children's or adults' barred list. It gives the Secretary of State the power to make regulations specifying Tribunal procedure. The Court of Appeal will hear appeals on points of law against a Tribunal decision.

## **REGULATED ACTIVITY**

### **Section 5: Regulated activity**

41. Section 5 provides that regulated activity relating to children and vulnerable adults is as set out in Schedule 4 to the Act. Broadly speaking, regulated activity includes work (paid and unpaid) which involves certain close contact with children or vulnerable adults. Subsequent sections create a series of offences in relation to regulated activity. So, for example, an individual commits an offence if he engages in regulated activity whilst barred. Other offences relate to the person who permits an individual to engage in regulated activity. For example, an employer may be guilty of an offence if he fails to carry out appropriate checks before permitting an employee to engage in regulated activity.

42. The section allows the Secretary of State to amend the

definition of regulated activity by order under the affirmative resolution procedure. Elsewhere in the Act the definition of regulated activity is modified for the purposes of particular provisions so that the frequency of an activity is irrelevant. The power to amend the definition of regulated activity includes the power to amend these modifications.

#### **Schedule 4: Regulated activity**

##### **Part 1: Regulated activity relating to children**

43. This Part defines regulated activity relating to children. Broadly speaking, the principal activities are -

- a. Certain types of close contact activity (specified in paragraph 2(1)) carried out frequently, on three or more days in a 30-day period, or overnight. Examples include, teaching, supervising, advising, or caring for children. This also includes the moderation of internet chatrooms likely to be used wholly or mainly by children (paragraph 2(1)(e)).
- b. Any activity carried out frequently or on three or more days in a 30-day period in an establishment specified in paragraph 3(1) which gives a person the opportunity to have contact with children in pursuance of his duties there (e.g. a school secretary).
- c. The provision of childminding where there is a requirement to be registered under the provisions of the Childcare Act 2006 or there would be a requirement to be registered but for the fact that the individual does not provide childcare for a child below the age of eight (paragraph 1(3)). Similarly childminders in Wales are also covered, but here the requirement to register arises from the Children Act 1989 (Paragraph 1(6)).
- d. Fostering a child (see below - section 53).
- e. The exercise of functions of the Children and Family Courts Advisory and Support Services (CAFCASS) support officers and their Welsh equivalent.
- f. The inspection of establishments specified in paragraph 3(1) (e.g. a school) on behalf of the organisations specified in paragraph 1(10) (e.g. OFSTED; Healthcare Commission) and the inspection of generalist health establishments specified in paragraph 1(12) and 1(13) on behalf of the organisations specified in paragraph 1(11).
- g. The day-to-day management or supervision on a regular basis of any person carrying out the activities mentioned in a, b, e and f above.
- h. The exercise of a function of the positions specified in paragraph 4(1) (e.g. school governor, Children's Commissioner, trustee of a children's charity, operator of the Information Sharing Index set up under the Children Act

2004).

44. Paragraph 2(2) of Schedule 4 provides that teaching, training, supervising etc. a child in the course of his employment will not be regulated activity. However this will not be the case where the child is under 16 and it is a person's principal responsibility to be engaged in that particular activity in relation to the child.

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